



# AGENDA

Phone: 541-682-5481  
www.eugene-or.gov/pc

**Meeting Location:**  
Atrium Building, Sloat Room  
99 West 10<sup>th</sup> Avenue  
Eugene, OR 97401

The Eugene Planning Commission welcomes your interest in this agenda item. Feel free to come and go as you please at the meeting. This meeting location is wheelchair-accessible. For the hearing impaired, FM assistive-listening devices are available or an interpreter can be provided with 48 hours' notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours' notice. To arrange for these services, contact the Planning Department at 541-682-5675.

## **TUESDAY, MAY 14, 2013 – 6:00 P.M.**

### **PUBLIC HEARING: ENVISION EUGENE IMPLEMENTATION: DOWNTOWN/MIXED USE CODE AND PLAN AMENDMENTS (City Files CA 13-1, MA 13-1)**

The Planning Commission will hold a public hearing on a package of land use code and Metro Plan/TransPlan amendments to facilitate downtown and mixed use development consistent with Envision Eugene.

Lead City Staff: Alissa Hansen, 541-682-5508  
alissa.h.hansen@ci.eugene.or.us

### **PUBLIC HEARING: STORMWATER DEVELOPMENT STANDARDS CODE AMENDMENTS (City File CA 13-2)**

The Planning Commission will hold a public hearing on a package of land use code amendments regarding stormwater destination, pollution reduction, operation and maintenance, and stormwater runoff from a planned unit development.

Lead City Staff: Peggy Keppler, 541-682-2869  
peggy.a.keppler@ci.eugene.or.us

### **Public Hearing Format:**

The Planning Commission will receive a brief City staff report followed by an opportunity for public comment. Time limits on testimony may be imposed. The Planning Commission may seek a response to testimony from City staff. At the end of the hearing, the Planning Commission Chair will announce whether the record is closed, the record will be held open, or the public hearing will be continued.

Commissioners: Steven Baker; Jonathan Belcher; Rick Duncan; Randy Hledik (Chair); John Jaworski; Jeffery Mills; William Randall (Vice Chair)

## **AGENDA ITEM SUMMARY**

**May 14, 2013**

**To:** Eugene Planning Commission

**From:** Alissa Hansen, Planning Division

**Subject:** Public hearing on amendments to the land use code and Metro Plan/TransPlan to facilitate downtown and mixed use development (City Files CA 13-1 and MA 13-1)

### **ACTION REQUESTED**

Hold a public hearing on a package of land use code amendments and concurrent Metro Plan/TransPlan amendment related to facilitating downtown and mixed use development.

### **BRIEFING STATEMENT**

As part of Envision Eugene, the City Council initiated code amendments to facilitate desired mixed use development for downtown, along transit corridors and in commercial areas. Consistent with several strategies in the Envision Eugene proposal, the purpose of these amendments is to facilitate compact urban development in the downtown, on key transit corridors, and in core commercial areas by changing land use regulations to better align with Envision Eugene. These amendments are also necessary as part of the city's strategy to accommodate the city's 20 year need for commercial and multi-family housing inside the current urban growth boundary (UGB). Specifically, these amendments are part of a package of land use efficiency strategies the city is relying on to accommodate approximately 400 commercial jobs and 1,600 multi-family homes inside the UGB by increasing the likelihood of redevelopment in the downtown, along transit corridors and in core commercial areas.

Based on input from a variety of sources, including the Envision Eugene public process, previous downtown code amendments processes, minor code amendment process, community stakeholders, and staff experience, this package of code amendments, and concurrent Metro Plan/TransPlan amendment, addresses eight topics related to downtown and mixed use development. The draft code and plan language, along with background information, is provided as Attachment A. The eight topic areas are:

1. Housing in Commercial Zones
2. Surface Parking Limitation in C-3 Zone
3. Large Commercial Facilities Standards in Downtown
4. Commercial Landscaping Standards
5. Nodal Development (/ND) Overlay Zone
6. Transit Oriented Development (/TD) Overlay Zone
7. Transportation Impact Analysis within Downtown Parking Exempt Area
8. General Commercial Standards (housekeeping)

Prior to drafting the attached code and plan language, a city staff team reviewed input received through a variety of sources (noted above), and drafted concepts addressing five topic areas. Community stakeholders with experience and expertise in downtown and mixed use development were contacted to seek feedback on the concepts, and again on the draft code and plan language. The concepts, and later the draft code and plan language, were also distributed to City staff for review to ensure consistency with other codes and programs. Staff presented the draft concepts to the Planning Commission at the November 19, 2012 work session for initial feedback. The original five topic areas expanded to eight as a result of the feedback from community stakeholders, staff and the Planning Commission. The Planning Commission held a subsequent work session on April 22, 2013 to review draft code and plan language. Some minor revisions have been made to the draft code and plan language (attached) since April 22, 2013, based on city attorney review.

### **Public Notice and Testimony**

Notice of the public hearing was sent to all neighborhood organizations, the City of Springfield, Lane County, as well as community groups and individuals who have requested notice. In addition, notice was also published in the Register Guard. Notice of the Metro Plan/TransPlan amendment was also sent to all owners and occupants of property within the affected area (the downtown parking exempt area), and all property owners within 300 feet. As of the writing of this report, no public testimony was received in response to the public hearing notice. Any testimony received prior to the public hearings will be forwarded to the Planning Commission upon receipt.

### **Applicable Criteria**

The Eugene Planning Commission shall address the relevant approval criteria from the Eugene Code (EC) in making recommendations to the Eugene City Council on the amendments, as listed below in ***bold italic***. Preliminary findings addressing the required approval criteria have been prepared by staff and are provided as Attachment B.

***EC 9.8065 Code Amendment Approval Criteria. If the city council elects to act, it may, by ordinance, adopt an amendment to this land use code that:***

- (1) Is consistent with applicable statewide planning goals as adopted by the Land Conservation and Development Commission.***
- (2) Is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.***
- (3) In the case of establishment of a special area zone, is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone.***

***EC 9.7730 Metro Plan - Approval of a Plan Amendment.***

- (3) Criteria for Approval of Plan Amendment. The following criteria shall be applied by the city council in approving or denying a Metro Plan amendment application:***
  - (a) The amendment must be consistent with the relevant Statewide Planning Goals adopted by the Land Conservation and Development Commission; and***
  - (b) Adoption of the amendment must not make the Metro Plan internally inconsistent.***

**Next Steps**

Staff recommends that the Planning Commission hold a public hearing and review the public testimony related to the proposed code and plan amendments. Following the public hearing, the Planning Commission will deliberate on the proposed code and plan amendments and provide a recommendation to the City Council. Planning Commission deliberations are scheduled for June 3, 2013. Following a Planning Commission recommendation, the City Council will hold a public hearing and take action in mid- 2013.

**FOR MORE INFORMATION**

Alissa Hansen, 541-682-5508 or [alissa.h.hansen@ci.eugene.or.us](mailto:alissa.h.hansen@ci.eugene.or.us)

**ATTACHMENTS**

- A. Proposed Code and Plan Language
- B. Preliminary Findings

**Envision Eugene Implementation: Facilitating Downtown & Mixed Use Development**  
**Proposed Code and Plan Language**  
**May 3, 2013**

## 1. Housing in Commercial Zones

### Purpose

Envision Eugene calls for facilitating the transformation of downtown, key transit corridors and core commercial areas as mixed-use neighborhoods that foster active, walkable, community living by providing a mix of residential, commercial, retail, and public uses in proximity to one another.

Although mixed use is often thought of as vertical (housing over commercial), it can also be horizontal (housing adjacent to commercial). The purpose of these amendments is to increase housing opportunities, including both types of mixed use, provide for flexibility and allow for adaptive re-use opportunities for existing buildings in downtown, on key transit corridors, and in core commercial areas.

### Concepts

- Allow for housing on the ground floor of buildings in the C-2 zone citywide (including downtown), thereby allowing for horizontal mixed use opportunities. This would also be applicable within two special area zones (S-C Chambers and S-F Fifth Avenue) that refer to the C-2 use and permit requirements.
- Allow for one or two apartment units (non-multi-family) in the C-3 zone downtown in conjunction with commercial use, thereby allowing for flexibility and mixed use opportunities
- As part of the Envision Eugene monitoring program, monitor the amount and type of housing developed in commercial zones to assess the effect of these code provisions on commercial and multi-family housing land supply, and make adjustments if necessary.

### Proposed Code Language

Proposed additions are in *red italics* and deletions show with double ~~strikeout~~

- 9.2160      Commercial Zone Land Use and Permit Requirements.** The following Table 9.2160 Commercial Zone Land Uses and Permit Requirements identifies those uses in Commercial Zones that are:
- |      |   |
|------|---|
| (P)  | Permitted, <del>subject to zone verification.</del>   |
| (SR) | Permitted, subject to an approved site review plan or an approved final planned unit development.                                 |
| (C)  | Subject to a conditional use permit or an approved final planned unit development.  |
| (S)  | Permitted, <del>subject to zone verification and</del> the Special Development Standards for Certain Uses beginning at EC 9.5000. |

(#) The numbers in ( ) in the table are uses that have special use limitations described in EC 9.2161.

Examples shown in Table 9.2160 are for informational purposes, and are not exclusive. Table 9.2160 does not indicate uses subject to Standards Review. Applicability of Standards Review procedures is set out at EC 9.8465.

Table 9.2160 Commercial Zone Land Uses and Permit Requirements					
	C-1	C-2	C-3	C-4	GO
<b>Residential</b>					
<b>Dwellings</b>					
One-Family Dwelling	P(6)	P( <del>6</del> )	<b>P(7)</b>		
Rowhouse (One-Family on Own Lot Attached to Adjacent Residence on Separate Lot with Garage or Carport Access to the Rear of the Lot)	S(6)	S( <del>6</del> )			P
Duplex (Two-Family Attached on Same Lot)	P(6)	P( <del>6</del> )	<b>P(7)</b>		P
Tri-plex (Three-Family Attached on Same Lot) (See EC 9.5500)	S(6)	S( <del>6</del> )	S		S
Four-plex (Four-Family Attached on Same Lot) (See EC 9.5500)	S(6)	S( <del>6</del> )	S		S
Multiple Family (3 or More Dwellings on Same Lot) (See EC 9.5500)	S(6)	S( <del>6</del> )	S		S

#### 9.2161 Special Use Limitations for Table 9.2160.

##### (6) Residential Use Limitation in C-1 and C-2.

~~Within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, residential dwellings are allowed in C-1 and C-2 zones and are not required to use the ground floor of the structure for commercial or non-residential purposes.~~

- (a) ~~Except for the Downtown Plan Area,~~ **Residential dwellings are allowed in the C-1 and C-2 zones if the ground floor of the structure is used for commercial or non-residential purposes according to Table 9.2161 Commercial Uses Requirements in Mixed-Use Residential Developments in C-1 Zones.**
- (b) For lots zoned C-1 within the S-JW Jefferson Westside Special Area Zone boundaries as shown on Figure 9.3605, the maximum number of dwellings per lot is specified at EC 9.3625(8) and 9.3626(1).

Table 9.2161 Commercial Uses Requirements in Mixed-Use Residential Developments <b>In C-1 Zones</b>		
<del>Not Within the Downtown Plan Area (See Map 9.2161(6) Downtown Plan Map)</del>		
	C-1	<del>C-2</del>
<b>Commercial Uses Requirements in Mixed-Use Residential Developments</b>		
<b>Minimum Percent of Building Street Frontage in Commercial Use.</b> Building street frontage shall be measured along the length of the building at the ground level within the maximum front yard setback. As used herein, "commercial" includes any non-residential use occupying a space at least 15 feet deep from the street facade of the building, excluding parking areas and garages.	80%	<del>60%</del>
<b>Minimum Percent of Ground Floor Area in Commercial Use.</b>	80%	<del>20%</del>

**(7) Residential Use Limitation in C-3. Within the Downtown Plan Area as shown on**

*Map 9.2161(6) Downtown Plan Map, a structure may include one and two dwellings if 80 percent of the ground floor of the structure is used for commercial or non-residential purposes.*

**(78)** (Renumber remaining list/reconcile table)

**(89)**

### Stakeholder Comments

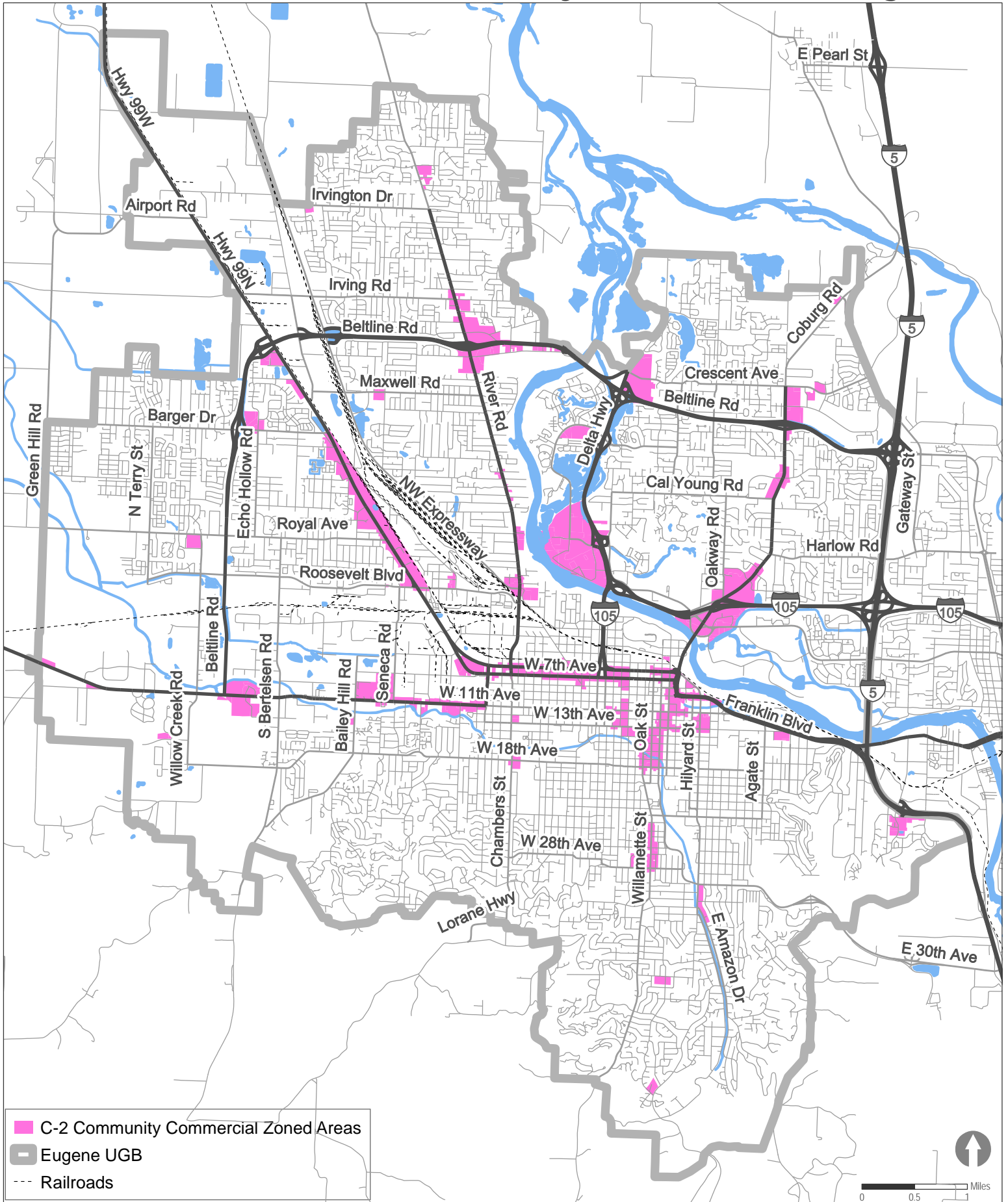
C-2 Change:

- General support
- If parking is on the ground floor, it should be screened.
- Make sure to communicate that this is city-wide

C-3 Change:

- General support
- Consider allowing two units but not one, to encourage safe behavior
- In general good, to support density and “eyes on the street” downtown, but may want to only allow it for buildings with 3 or more stories

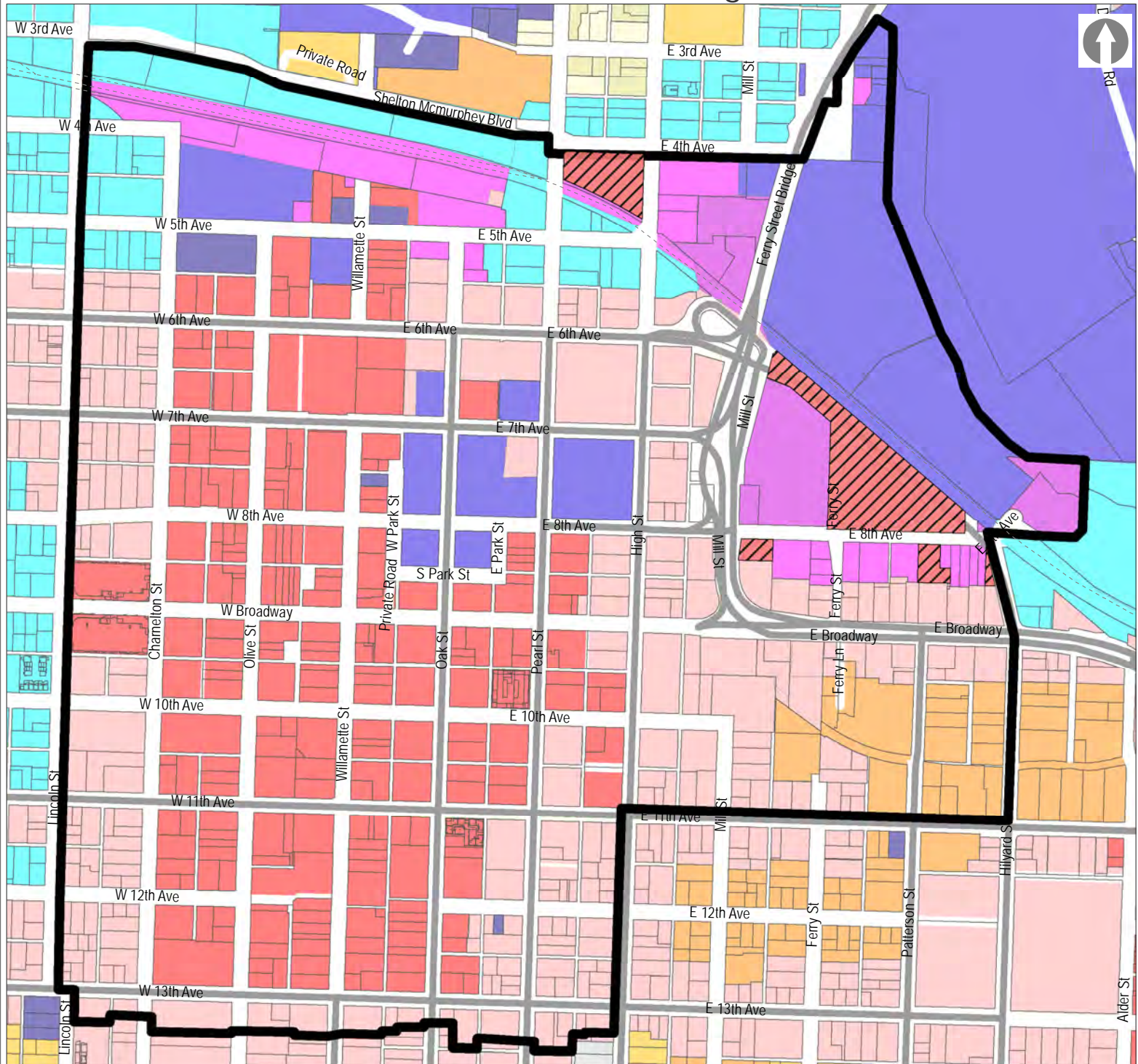
## Areas with C-2 Community Commercial Zoning



Caution: This map is based on imprecise source data, subject to change, and for general reference only.



# Downtown Zoning



Downtown Plan Boundary

0 500 Feet

ND Overlay Zone

## Zoning

AG Agricultural

C-1 Neighborhood Commercial

C-2 Community Commercial

C-3 Major Commercial

C-4 Commercial Industrial

GO General Office

I-1 Campus Industrial

I-2 Light Medium Industrial

I-3 Heavy Industrial

NR Natural Resource

PL Public Land

R-1 Low Density Residential

R-1.5 Rowhouse

R-2 Medium Density Residential

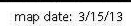
R-3 Limited High Density Residential

R-4 High Density Residential

S-H Special Area - Historic

S Special Area Zone





## 2. Surface Parking Limitation in C-3 Zone

### Purpose

In 2001, the council adopted a requirement to discourage surface parking lots by setting a limit of 20 surface parking spaces and requiring all remaining spaces to be in structured parking. Additionally, the provision requires at least 1,000 square feet of floor area on the development site for each new parking space created, meaning that new stand-alone surface parking lots could not be created. This requirement has proved to be a major issue for those considering redevelopment in the C-3 zone. This standard does not account for the more typical evolutionary development that occurs downtown, where land is redeveloped with portions of the lot retained in surface parking, or where buildings are demolished and the lot is retained temporarily for surface parking. Over time, that parking is converted as property values increase and additional redevelopment occurs.

This issue was identified early in the code amendment process in 2004. Stakeholder input at that time requested flexibility in redevelopment to allow more than 20 spaces, particularly for larger sites and where the parking could be screened from pedestrians. This issue has resurfaced multiple times during other code amendment processes, as well as during the Envision Eugene public involvement process.

### Concept

- Allow for up to 20 additional surface parking spaces so long as all on-site parking is accessed via an alley and no other vehicle access from any street right-of-way (i.e. no curb cut) is allowed. Remove requirement that there must be at least 1,000 square feet of building floor area on site for each new space, thereby allowing stand-alone surface parking lots.

### Proposed Code Language

Proposed additions are in *red italics* and deletions show with double ~~strikeout~~

- 9.2160 Commercial Zone Land Use and Permit Requirements.** The following Table 9.2160 Commercial Zone Land Uses and Permit Requirements identifies those uses in Commercial Zones that are:
- |      |   |
|------|---|
| (P)  | Permitted, <del>subject to zone verification.</del>   |
| (SR) | Permitted, subject to an approved site review plan or an approved final planned unit development.                                 |
| (C)  | Subject to a conditional use permit or an approved final planned unit development.  |
| (S)  | Permitted, subject to <del>zone verification and</del> the Special Development Standards for Certain Uses beginning at EC 9.5000. |
| (#)  | The numbers in ( ) in the table are uses that have special use limitations described in EC 9.2161.                                |

Examples shown in Table 9.2160 are for informational purposes, and are not exclusive. Table 9.2160 does not indicate uses subject to Standards Review. Applicability of Standards Review procedures is set out at EC 9.8465.

Table 9.2160 Commercial Zone Land Uses and Permit Requirements					
	C-1	C-2	C-3	C-4	GO
<b>Motor Vehicle Related Uses</b>					
Parking Area not directly related to a primary use on the same development site		SR (4)	P(5)	P	P
Structured Parking, up to two levels not directly related to a primary use on the same development site		P	P	P	P
Structured Parking, three or more levels not directly related to a primary use on the same development site		C	P	P	C

**9.2161 Special Use Limitations for Table 9.2160.**

- (4) **Parking Areas in C-2.** Any parking area established after August 1, 2001 that is not directly tied to a specific development shall require approval through the site review process.
- (5) **Parking Areas in C-3.** ~~For surface parking spaces created after August 1, 2001, there shall be at least 1,000 square feet of floor area on the development site for each new parking space created.~~ The maximum number of surface parking spaces on a development site shall be 20. *Up to 20 additional surface parking spaces may be created if all on-site parking is accessed via an alley and no vehicle access from any street right-of-way (i.e. no access connection) is allowed.* All parking spaces in excess of these limits shall be in structured parking.

**Stakeholder Comments**

**Mixed support**

- Those not in support expressed need for density and development downtown, and that surface parking lots are in opposition to this.
- Those in support expressed that it would provide flexibility for transitions of sites and would allow for development to happen when the market is ready.
- Ok with change but want it to be associated with a use, not just for general public use.

### 3. Large Commercial Facilities Standards

#### Purpose

As part of the land use code update in 2001, all new buildings in commercial zones with 25,000 square feet or more of floor area were required to meet the Large Commercial Facilities Standards, which are a set of development standards addressing the appearance and function of large commercial developments. While the intent of these standards is appropriate for downtown, for the most part, the standards are geared towards large-scale developments typically found in a more suburban setting, rather than the downtown core where there is a gridded street pattern and associated blocks, ample sidewalks and alleys, and parking exempt areas.

These standards attempt to address building and site design issues which the general commercial standards would not adequately cover, especially regarding larger commercial centers. Not only are downtown sites physically distinct in nature, they lie within the transit oriented district overly (/TD) which already include additional standards specific to an urban setting.

Two recent downtown projects, the Lane Community College Downtown Campus and the Woolworth Building, requested adjustments to the on-site pedestrian circulation requirements of these standards. These provisions are redundant in an urban setting when public sidewalks and alleyways are directly adjacent to the building facades.

#### Concepts

- Clarify that these standards apply to new buildings with 25,000 square feet *in commercial use*.
- Exempt development within the boundaries of the Downtown Plan area from certain Large Commercial Facilities standards:
  - Vehicle connections between sites [EC 9.2173(5)]
  - On-Site Pedestrian Circulation [EC 9.2173(6)]
  - Interior Yard Landscaping [EC 9.2173(7)]
  - Delivery and Loading Facilities [EC 9.2173(9)]
  - Setbacks from Residential Zoning [EC 9.2173(11)]
  - The remaining standards would continue to apply.
- As part of the Envision Eugene monitoring program, monitor the amount and type development in commercial zones to assess the effect of these code provisions on commercial land supply, and make adjustments if necessary.

#### Proposed Code Language

Proposed additions are in *red italics* and deletions show with double ~~strikeout~~

#### 9.2171 **Special Commercial Zone Development Standards for Table 9.2170.**

- (7) ~~Minimum interior yard setbacks for large commercial facilities on a lot adjacent to or facing a residential zone shall be 30 feet. Within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to this section may be made~~

~~based on the criteria in EC 9.8030(16).~~ *[Moved to Large Commercial Facilities Standards, below and revised for clarity]*

9.2173

**Commercial Zone Development Standards - Large Commercial Facilities.**

- (1) Description and Purpose.** The intent of these regulations is to:
  - (a) Improve the appearance and function of large commercial developments in any commercial zone.
  - (b) Encourage efficient use of land resources and urban services.
  - (c) Encourage mixed use.
  - (d) Support transportation options.
  - (e) Promote detailed, human-scale site and building design.
- (2) Application of Standards.**
  - (a) In addition to the standards of EC 9.2170 Commercial Zone Development Standards - General, **except as provide in subsection (b) below, all of the standards in this section apply to any new building with 25,000 square feet or more of floor area in commercial or non-residential use**, and the portion of the development site specifically affected by the new building,*
  - (b) The standards in subsections (5), (6), (7), (9) and (11) do not apply within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map.*
- (3) Building Entrances.**
  - (a) All building sides that face an adjacent street shall feature at least one customer entrance. **(See Figure 9.2173(3) Large Commercial Facilities - Building Entrances.)**
  - (b) Where a building faces more than two adjacent streets, excluding those with limited access, this requirement shall apply only to two sides of the building.
  - (c) Corner entrances, placed at an angle of up to 45 degrees from the primary street, as measured from the street lot line, may be substituted for separate entrances required under subsection (b), above. **(See Figure 9.2173(3) Large Commercial Facilities - Building Entrances.)**
- (4) Off-Street Parking.**
  - (a) No off-street parking shall be located between the front facade of any new building(s) and the primary adjacent street.
  - (b) Individual parking areas may be no larger than 55,000 square feet in size. Separation between individual parking areas may be achieved by placement of internal accessways. Such accessways used to separate parking areas shall have at least one travel lane, curbs, and sidewalks at least 8 feet in width on both sides of the access way.
- (5) Vehicle Connections Between Sites.** For development sites that abut an arterial or collector street, at least one internal vehicle accessway connection must be made between the subject development site and adjacent sites zoned for commercial use.
- (6) On-Site Pedestrian Circulation.** In place of standards set forth in EC 9.6730 Pedestrian Circulation On-Site, the following standards shall apply to large commercial facilities:
  - (a) A continuous internal pedestrian walkway, no less than 8 feet in width, shall be provided from the public sidewalks or right-of-way to all customer entrances of all buildings on the development site, and to all public sidewalks and paths abutting the development site.
  - (b) Sidewalks, no less than 8 feet in width, shall be provided along the full length

- of building walls featuring a customer entrance, and along any wall abutting public parking areas. Such sidewalks shall be located at least 6 feet from the wall of the building to provide planting beds for foundation landscaping, except where features such as arcades or entryways are part of the facade.
- (c) Sidewalks, no less than 8 feet in width, shall be provided for direct connection to entrances of all new and existing buildings on the development site to one another, except entrances used for loading and unloading freight.
  - (d) Internal pedestrian walkways provided in conformance with subsection (a) above shall provide weather protection features such as awnings or arcades within 30 feet of all customer entrances.
  - (e) At least one pedestrian accessway connection, a minimum of 8 feet in width, shall be made to connect the buildings on the subject development site to all adjacent sites either developed or zoned for commercial, office, residential, or institutional use.
  - (f) All on-site pedestrian walkways located in vehicle use areas shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials such as pavers, bricks, or scored concrete to enhance pedestrian safety and comfort, as well as the attractiveness of the walkways.
- (7) Interior Yard Landscaping.** Interior yards abutting a lot with a residential zone shall be provided with landscaping that meets the requirements in EC 9.6210(7) Massed Landscape Standard (L-7). The required landscaping may be pierced by pedestrian and vehicular access ways.
- (8) Service and Loading Areas.**
- (a) Loading docks, outdoor storage, utility meters, mechanical equipment, trash collection, trash compaction, and other service functions shall comply with the standards stated in EC 9.2170 Commercial Zone Development Standards - General.
  - (b) Outdoor areas for the display and sale of seasonal inventory shall be permanently defined and landscaped as set forth in EC 9.2171(11) Outdoor Merchandise Display.
- (9) Delivery and Loading Facilities.** ~~On lots abutting parcels zoned for residential development, a~~ Delivery and loading facilities shall be setback a minimum of 30 feet from ~~interior yards abutting residentially zoned lots~~ property lines with required setbacks landscaped to at least the standards in EC 9.6210(4) High Wall Landscape Standard (L-4).
- (10) Exterior Wall Articulation, Facades, and Ground Floor Windows.**
- (a) Exterior building walls shall not continue along an uninterrupted plane for more than 100 feet. An uninterrupted plane is a wall that has no variation in exterior surface along its length. Except for building walls facing an alley, ground floor facades 100 feet or greater in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least 3 percent of the length of the facade and extending at least 20 percent of the length of the facade. **(See Figure 9.2173(10)(a) Large Commercial Facilities-Exterior Wall Articulation.)**
  - (b) Ground floor facades that face streets adjacent to the development site shall have arcades, collonades, display windows, entry areas, awnings, or other such features along no less than 50 percent of their horizontal length. **(See Figure 9.2173(10)(b) Large Commercial Facilities-Exterior Facades.)**

- (c) Except for building walls facing an alley, ground floor walls shall contain windows (as stated below) at the ground level. The windows may extend a maximum sill height of 4 feet above finished grade to any head height. The portion of window area meeting this standard is from the sill (bottom edge) to the head (top edge) including portions up to 9 feet above the finished grade. Alcoves, entryways, and extruding portions of the wall shall be treated by measuring through such areas as though along the flat wall of a building. **(See Figure 9.2173(10)(c) Large Commercial Facilities-Ground Floor Window Calculation.)** Solid walls are prohibited along street frontages. This standard does not apply to parking structures. For a wall with a loading dock, the wall length referred to in subsection (10)(c)1., below, shall exclude the wall area affiliated with the loading and unloading of freight.
1. General Standard. The windows in any walls that require windows shall occupy at least 50 percent of the length and 25 percent of the ground floor wall area. Required window areas shall be either windows that allow views into working areas or lobbies, pedestrian entrances, or display windows. The bottom of the windows shall be no more than 4 feet above the finished grade.
  2. Corner Lots. On corner lots, the general ground floor window standard stated in subsection (c) must be met on one street frontage only. On the other street(s), the requirement is ½ of the general standard. The applicant may choose on which street to apply the general standard.

**(11) Interior Yard Setbacks from Residential Zoning.** *Interior yard setbacks shall be a minimum of 30 feet from abutting residentially zoned lots.*

**(142) Adjustments.** Except for the Downtown Plan Area, adjustments to the standards in this section may be made, based on criteria at EC 9.8030(6) Large Commercial Facilities Standards Adjustment. Within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to the standards in this section may be made based on the criteria at EC 9.8030(16).

#### Stakeholder Comments

- Generally strong support – makes sense
- Concern with any impact on adjacent residential (especially with loading/service)
- Concern with connectivity within shopping areas like 5th Street Market

## 4. Commercial Landscaping Standards

### Purpose

New development in all commercial zones, except the C-3 Major Commercial zone, is subject to landscaping standards, including minimum landscape area requirement and minimum landscape bed widths. While these standards are appropriate for most areas of town, they are not relevant or consistent within a higher quality pedestrian-friendly urban setting. Many developments attain the 10% minimum landscaping requirement through parking lot landscaping. However, much of downtown is parking exempt, meaning that on-site parking, and the associated required landscaping, is not required. Street trees, planters and public open space already provide landscaping on a downtown wide scale. Removal of this standard for all downtown would not preclude landscaping, but would not prescribe it on a site-by-site basis.

Although a landscape bed is not typically required between a building and a street, if one is provided, it is required to be 7-feet in width. This width requirement is seen as a disincentive for providing any landscaping within the front yard, which could be an amenity over paving. The proposed 5-foot width is consistent with a /TD overlay zone landscaping bed requirement.

### Concepts

- Eliminate minimum landscape area requirement (10% of site) for C-2 zone properties within the Downtown Plan area. C-3 zone properties are already exempt from providing landscaping.
- Reduce required width of landscaping bed in front yard from 7 feet to 5 feet.

### Proposed Code Language

Proposed additions are in *red italics* and deletions show with double ~~strikeout~~.

#### **9.2171 Special Commercial Zone Development Standards for Table 9.2170.**

- (8) In addition to the minimum landscape area requirements of Table 9.2170 Commercial Zone Development Standards, the following landscape standards apply to new buildings, and the portion of the development site specifically affected by the new building and shall be subject to the requirements of this subsection.
- (a) Minimum Landscape Area Required. In all commercial zones, except *C-2 within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map and C-3*, a minimum of 10 percent of the development site shall be landscaped with living plant materials. All required landscaping shall comply with landscape standards beginning at EC 9.6200 Purpose of Landscape Standards. Any required landscaping, such as for required front or interior yard setbacks or off-street parking areas, shall apply toward the development site minimum landscape requirement. The area of exterior landscaping on the roof of a building or exposed terrace may be used to meet the 10% minimum

landscaping standard. Up to 50% of the landscape area may be a hard surface for recreational or enhanced pedestrian space.

- (b) Minimum Landscape Standard. Unless otherwise specified in this land use code, required landscape areas must, at a minimum, comply with EC 9.6210(1) Basic Landscape Standard (L-1).
- (c) Landscaping In Front Yard Setbacks. If a front yard setback contains a landscape planting bed, the planting bed shall be a minimum of ~~7~~ **5** feet in width and shall comply, at a minimum, with EC 9.6210(1) Basic Landscape Standard (L-1).
- (d) Landscaping In Interior Yard Setbacks Abutting Residential Zones. Landscape planting beds within the interior yard setbacks abutting a residential zone shall be a minimum of 7 feet in width and shall comply with EC 9.6210(3) High Screen Landscape Standard (L-3).
- (e) Street Trees. Street tree requirements are specified in EC 7.280 Street Tree Program - Policies, Standards, Procedure.
- (f) Within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to subsections ~~(8)(a)~~ (8)(b) and (8)(c) may be made based on the criteria in EC 9.8030(16).

### Stakeholder Comments

#### Minimum Landscape Area Reduction

- Support for requiring 5% for C-2 within downtown, but not eliminating
- Support for eliminating or requiring 5% if adjustable (encourages more sustainable building)

#### Required bed width reduction

- Consider three feet instead of seven feet. If three feet, then do not require trees to be planted in bed.
- If three feet, ensure that width of planting area is three feet (not including curbs)

## 5. /ND Nodal Development Overlay Zone

### Purpose

Consistent with the nodal development program outlined in TransPlan, the City has relied on the re-designation and re-zoning of specific areas for implementation. This has occurred either through the application of specific area zones (resulting from area planning, such as Walnut Station) or through the application of a general “nodal development” overlay zone.

The /ND overlay zone is intended to direct and encourage nodal development areas from incompatible development prior to adoption of nodal development plans and implementing land use regulations (EC 9.4250). Nodal development is defined as a mixed use, pedestrian friendly land use pattern that seeks to increase concentrations of population and employment in well-defined areas with good transit service, a mix of diverse and compatible land uses, and public and private improvements designed to be pedestrian and transit oriented.

The /ND Nodal Development Overlay zone applies within four areas across the city: Crescent Village, Danebo, Lower River Road, and Downtown (see map). Within the first three areas all properties within the city limits have the /ND overlay, and the remaining properties receive the overlay zone upon annexation. Within downtown, the /ND overlay was not applied when the area was designated nodal development in the Metro Plan. Rather, it is applied when properties are re-zoned. As such, only five properties within downtown are zoned /ND.

Although the intent of the /ND overlay is to encourage mixed use development, because of its one-size-fits-all nature, several of the regulations have been identified as barriers to commercial and residential developments. In an effort to protect these areas from incompatible development, the /ND regulations have had the effect of restricting or limiting development.

### Concepts

- Allow for adjustments to the density and development standards for all parcels in the /ND overlay, not just those with no alley access or physical or legal constraints
- Clarify the requirements for Parking Between Buildings and the Street for corner lots
- Add relevant adjustment review criteria based on the Downtown Plan Area adjustment review criteria

### Proposed Code Language

Proposed additions are in *red italics* and deletions show with double ~~strikeout~~

### **/ND Nodal Development Overlay Zone**

**9.4250**     **Purpose of /ND Nodal Development Overlay Zone.** The /ND Nodal Development overlay zone is intended to direct and encourage development that is supportive of nodal development and to protect identified nodal development areas from incompatible

development prior to adoption of nodal development plans and implementing land use regulations. An adopted development plan for a specific node may recommend the /ND Nodal Development overlay zone as the sole implementing land use regulation for all or part of a nodal development area. It is intended that each node identified by the /ND overlay zone achieve an average overall residential density of at least 12 units per net residential acre.

**9.4260**     **Procedure for Applying the /ND Nodal Development Overlay Zone.** Rezoning to apply the /ND overlay zone concurrent with a Metro Plan diagram amendment to apply the /ND Nodal Development designation shall be processed as a Type V application as provided in EC 9.7500 through EC 9.7560 Type V Application Procedures. Except as provided in EC 9.7810, rezoning to apply the /ND overlay zone to property shown as ND Nodal Development on the Metro Plan diagram shall be processed as a Type III application as provided in EC 9.7300 through EC 9.7340 Type III Application Procedures. Proceedings to apply the /ND overlay zone may be initiated only by the city council.

**9.4270**     **Applicability.** The /ND overlay zone applies to all property where /ND is indicated on the Eugene overlay zone map, except where the property is an historic property according to this land use code. The /ND requirements in EC 9.4280 and 9.4290 apply to the following:

- (1) New development on vacant land.
- (2) New structures on already developed sites, such as conversion of a parking area to a structure or demolition of a structure and construction of a new structure.
- (3) An expansion of 30% or more of the total existing building square footage on the development site; however, expansion of a structure for a use prohibited under EC 9.4280 or the expansion/addition of a drive-through facility as part of the expansion of an existing structure are prohibited.

The /ND standards in EC 9.4290 do not apply to a building alteration. The provisions of the /ND overlay zone supplement those of the applicable base zone or special area zone and other applicable overlay zones. Where overlay zone and base zone provisions conflict, the more restrictive controls.

**9.4280**     **Prohibited Uses and Special Use Limitations.**

**(1) Prohibited Uses.**

**(a) Motor Vehicle Related Uses.**

1. Car washes.
2. Parts stores.
3. Recreational vehicle and heavy truck, sales/rental/service.
4. Motor vehicle and motorcycle sales/rental/service.
5. Service stations, includes quick servicing.
6. Tires, sales/service.
7. Transit park and ride, major or minor, except under a shared parking arrangement with another permitted use.
8. Parking areas, where the entire lot is exclusively used for parking and does not provide shared parking for more than one development site.

**(b) Trade (Retail and Wholesale).**

1. Agricultural machinery rental/sales/service.
2. Boats and watercraft sales and service.
3. Equipment, heavy, rental/sales/service.
4. Manufactured dwelling sales/service/repair.

**(2) Special Use Limitations.**

- (a) Except for the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, no use may include a drive-through facility, unless explicitly permitted in a refinement plan. Within the Downtown Plan Area:
  - 1. Drive-through only establishments are not permitted.
  - 2. For a structure that has two or more functional floors, a drive-through facility is permitted.
  - 3. For a structure that has only one functional floor, a drive-through facility to provide financial services, pharmaceutical prescription dispensing or government services may be permitted subject to an adjustment based on the criteria at EC 9.8030(16).
- (b) No new building designed to be occupied by retail uses may exceed 50,000 square feet of building area on the ground floor and only one such new building *on the development site* may contain 50,000 square feet of building area on the ground floor.

**9.4290 Density and Development Standards.** In addition to the requirements of the base zone, the following standards shall apply *to all development, except that the standards in subsection (2) and (3) do not apply to single-family dwellings or duplexes.*

**(1) Minimum Residential Density and Floor Area Ratio (FAR).**

- (a) Where the base zone is R-1 or R-1.5, new subdivisions shall achieve a minimum residential density of 8 units per net acre. Minimum residential density in R-2 shall be 15 units per net acre; in R-3 it shall be 25 units per net acre; and in R-4 it shall be 30 units per net acre.
- (b) Where the base zone is C-1, C-2, C-3, or GO, the /TD standards in EC 9.4530 shall apply, except that the minimum floor area ratio (FAR) shall be 1.0 FAR (1.0 square feet of floor area to 1 square foot of the development site).
- (c) Where the base zone is C-4, I-1, I-2, or I-3, the /TD standards in EC 9.4530 shall apply, except that the minimum floor area ratio (FAR) shall be .40 FAR (.40 square feet of floor area to 1 square foot of the development site).

**(2) Building Setbacks.**

- (a) Buildings shall be set back a maximum of 15 feet from the street. There is no minimum setback.
- (b) Where the site is adjacent to more than one street, a building is required to meet the above maximum setback standard on only one of the streets.

**(3) Parking Between Buildings and the Street.**

- (a) Automobile parking, driving, and maneuvering areas shall not be located between the main building(s) and a street.*
- (b) For a development site that abuts a street, parking may be located at the rear of the building or on 1 or both sides of a building when at least 60 percent of the site frontage abutting the street (excluding required interior yards) is occupied by a building and/or an enhanced pedestrian space with no more than 20 percent of the 60 percent in enhanced pedestrian spaces, as described in EC 9.4530(3)(c).*
- (c) For purposes of determining the percent of site frontage, the building or enhanced pedestrian space shall be within 15 feet of the street.*
- (d) For a development site with frontage on more than one street, these standards only apply along one street frontage.*

**(4) Adjustments.** ~~Except for the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, a~~

An adjustment to any of the standards in this section may be made ~~for ND parcels with no alley access or with physical or legal constraints~~ based

on pursuant to the criteria beginning at ~~in~~ EC 9.8045 ~~30(31)~~ of this land use code. Adjustments to this section may be made for any parcel within the Downtown Plan Area based on the criteria at EC 9.8030(16).

**9.8030** **Adjustment Review - Approval Criteria.** The planning director shall approve, conditionally approve, or deny an adjustment review application. Approval or conditional approval shall be based on compliance with the following applicable criteria.

**(14) Overlay Zone Development Standards Adjustment.** Unless a subsection of EC 9.8030 sets out adjustment review criteria for a specific overlay zone, where this land use code provides that overlay zone standards may be adjusted, the standards may be adjusted upon a finding that the adjustment of the standards will result in a development that is consistent with the purpose of the overlay.

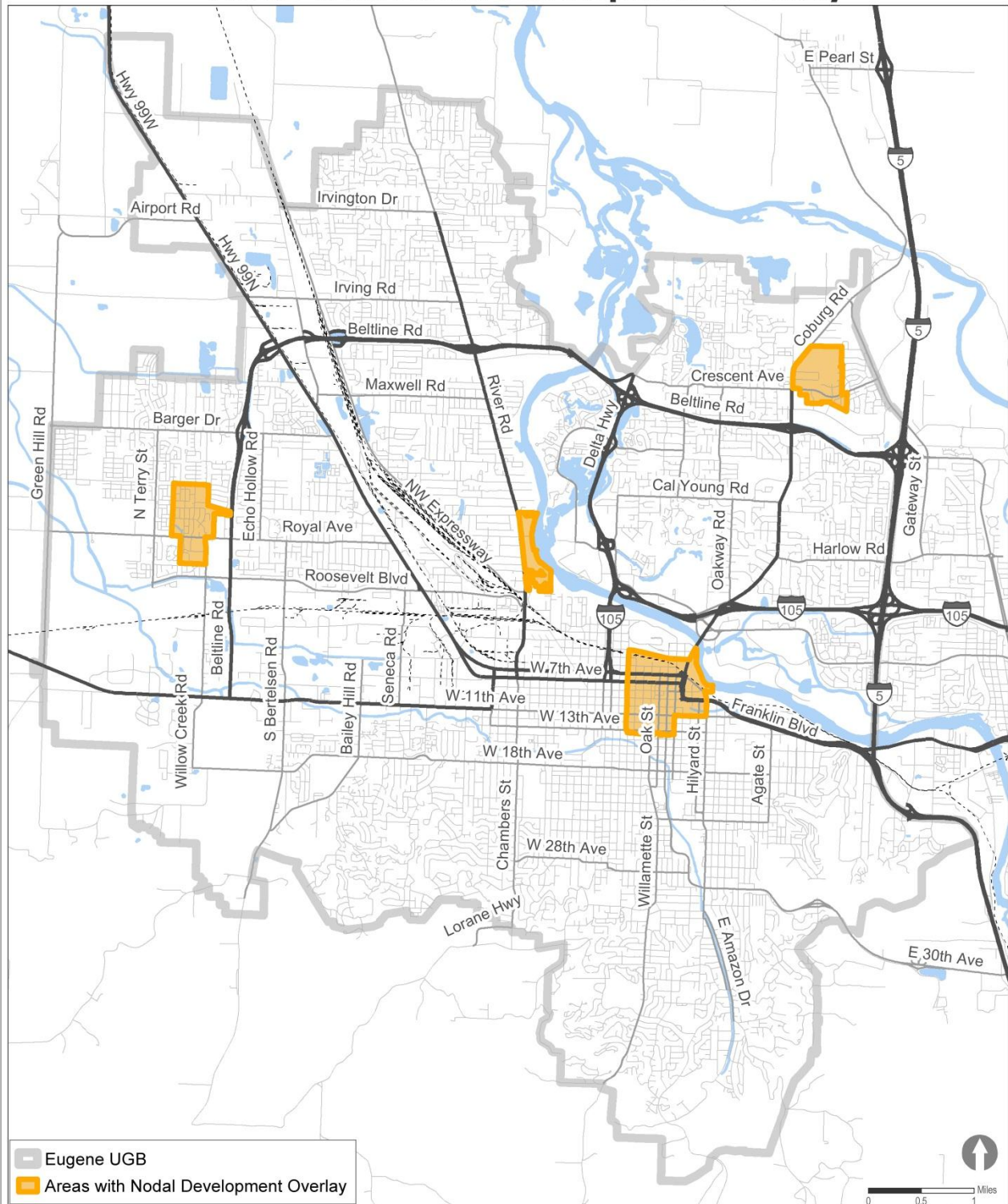
**(31) /ND Nodal Development Overlay Zone.** *Where this land use code provides that a development standard applicable within the /ND Nodal Development overlay zone may be adjusted, the city shall approve an adjustment if the applicant demonstrates consistency with all of the following:*

- (a)** *The requested adjustment will allow the project to achieve an equivalent or higher quality design than would result from strict adherence to the standards through:*
- 1. A building orientation, massing, articulation and façade that contribute positively to the surrounding urban environment; and*
  - 2. An overall site and building design that creates a safe and attractive pedestrian environment. Design elements for this purpose may include special architectural design features, high quality materials, outdoor seating, pedestrian-scaled lighting, prominent entries facing the street, multiple openings or windows, and a significant use of clear, untinted glass.*
- (b)** *Impacts to any adjacent residentially-zoned property are minimized. Design elements for this purpose may include treatment of building massing, setbacks, screening and landscaping.*

### Stakeholder Comments

- Talk with more stakeholders
- Consider a bigger more comprehensive fix to eliminate or revamp entire overlay (requires changes to Metro Plan/TransPlan)
- Consider impact on future transit routes in criteria
- Support for more flexibility/clarity and more relevant adjustment review criteria

## Areas with Nodal Development Overlay



Caution: This map is based on imprecise source data, subject to change, and for general reference only.

City of Eugene  
Planning and Development Department  
March 22, 2013

## 6. /TD Transit Oriented Development Overlay Zone

### Purpose

Similar to the /ND overlay zone, the Transit Orient Development overlay zone (/TD) is intended to promote mixed use, pedestrian friendly land use patterns with high potential for enhanced transit. This overlay contains development standards that address a variety of building and site design issues, several of which have been incorporated into the /ND overlay zone.

The proposed changes mirror two of the changes proposed for the /ND overlay zone, and are intended to provide clarity and to better align the adjustment review criteria with the intent of the zone and development standards.

### Concepts

- Clarify the requirements for Parking Between Buildings and the Street for corner lots (mirroring changes to /ND overlay zone).
- Add relevant adjustment review criteria based on Downtown Plan Area adjustment review criteria.

### Proposed Code Language

Proposed additions are in *red italics* and deletions show with double ~~strikeout~~

### **/TD Transit Oriented Development Overlay Zone**

**9.4500 Purpose of /TD Transit Oriented Development Overlay Zone.** The /TD Transit Oriented Development Overlay Zone is intended to promote the creation and retention of mixed land uses in areas with high potential for enhanced transit and pedestrian activity. Pedestrian circulation and transit access are especially important and have increased emphasis in areas with the /TD overlay zone. The development standards are designed to encourage compact urban growth, opportunities for increased choice of transportation mode, reduced reliance on the automobile, and a safe and pleasant pedestrian environment, by insuring an attractive streetscape, a functional mix of complementary uses, and provision of amenities that support the use of transit, bicycles, and pedestrian facilities.

**9.4530 /TD Transit Oriented Development Overlay Zone Development Standards.**

**(4) Parking Between Buildings and the Street.**

- (a)* Automobile parking, driving, and maneuvering areas shall not be located between the main building(s) and a street.
- (b)* For *a development* sites that abut~~s~~ a street, parking may be located at the rear of the building or on 1 or both sides of a building when at least 60 percent of the site frontage abutting the street (excluding required interior yards) is

occupied by a building and/or an enhanced pedestrian space with no more than 20 percent of the 60 percent in enhanced pedestrian spaces, as described in EC 9.4530(3)(c).

- (c) For purposes of determining the percent of site frontage, the building or enhanced pedestrian space shall be within 15 feet of the street.
- (d) *For a development site with frontage on more than one street, these standards only apply along one street frontage.*

- (7) **Adjustments.** ~~Except for the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, a~~ An adjustment to any of the standards in this section may be made pursuant to *based on* the criteria beginning at *in* EC 9.8015 ~~30(32)~~ *(32)* of this land use code. ~~Within the Downtown Plan Area, adjustments to any of the standards in this section may be made based on the criteria at EC 9.8030(16).~~

**9.8030** **Adjustment Review - Approval Criteria.** The planning director shall approve, conditionally approve, or deny an adjustment review application. Approval or conditional approval shall be based on compliance with the following applicable criteria.

- (14) **Overlay Zone Development Standards Adjustment.** Unless a subsection of EC 9.8030 sets out adjustment review criteria for a specific overlay zone, where this land use code provides that overlay zone standards may be adjusted, the standards may be adjusted upon a finding that the adjustment of the standards will result in a development that is consistent with the purpose of the overlay.

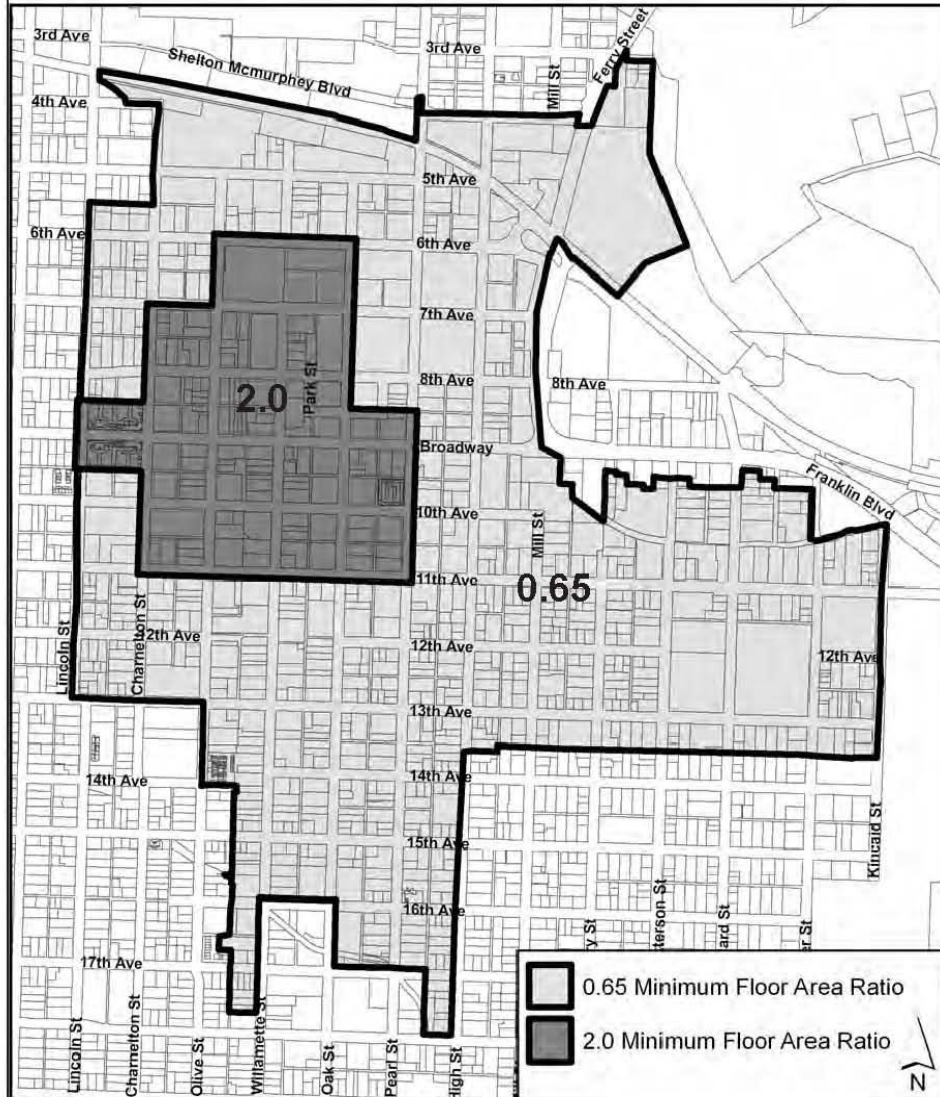
*(32) /TD Transit Oriented Development Overlay Zone. Where this land use code provides that a development standard applicable within the /TD Transit Oriented Development overlay zone may be adjusted, approval of the request shall be given if the applicant demonstrates consistency with all of the following:*

- (a) *The requested adjustment will allow the project to achieve an equivalent or higher quality design than would result from strict adherence to the standards through:*
  1. *A building orientation, massing, articulation and façade that contribute positively to the surrounding urban environment; and*
  2. *An overall site and building design that creates a safe and attractive pedestrian environment. Design elements for this purpose may include special architectural design features, high quality materials, outdoor seating, pedestrian-scaled lighting, prominent entries facing the street, multiple openings or windows, and a significant use of clear, untinted glass.*
- (b) *Impacts to any adjacent residentially-zoned property are minimized. Design elements for this purpose may include treatment of building massing, setbacks, screening and landscaping.*

### Stakeholder Comments

- Consider impact on future transit routes in criteria
- Support for more flexibility/clarity and more relevant adjustment review criteria

Map 9.4510  
**Transit Oriented Development  
 Overlay Zone**



## 7. Traffic Impact Analysis Requirement within Downtown Parking Exempt Area

### Purpose

A Traffic Impact Analysis (TIA) Review is required for developments that exceed a threshold number of trips or anticipated traffic problems. The purpose of the TIA Review is to ensure that developments provide necessary facilities to accommodate the traffic impact of a proposed development which generates a significant amount of traffic, contributes to traffic issues in the area, or results in unacceptable levels of service of the roadway system.

The TIA is an important and relevant tool for managing and mitigating the impacts of growth and development. However, the downtown area has some unique characteristics that lessen the benefits or need of the TIA. These include:

- The downtown has lower adopted mobility standards than all other areas in the city (level of service E for downtown compared to level of service D for the rest of the city) as a result of the Central Area Transportation Study (CATS).
- The downtown area consists of an established grid pattern of interconnected streets.
- There are multiple lower and higher order streets that enter and exit the downtown core.
- There are numerous options for distribution and assignments of projected trips.
- Speeds are generally lower and the pedestrian level environment tends to keep it that way.
- Downtown has ample transit facilities and the City has put a priority on encouraging alternate modes of travel.
- Development in downtown is primarily re-development of existing properties.
- It is unlikely that new intersections, new street alignments or widths would be proposed or exacted.
- Downtown buildings generally have only a small setback or are zero lot line developments. This reduces the likelihood of adding lanes. Any capacity upgrades would likely come from operational or geometric changes to improve efficiencies where right-of-way is constrained.
- Recently adopted access management standards control new driveway locations.
- Within a large part of downtown, projects are exempt from providing any on-site vehicle parking.

During the Envision Eugene public involvement events, it was suggested that the TIA requirement in the downtown area be eliminated to save unnecessary expense, time and expectations of site specific system improvements.

### Concept

- Eliminate TIA requirement for development within the boundaries of the Downtown Automobile Parking Exempt Area. Retain requirement outside of Downtown Automobile Parking Exempt Area.
- To be processed concurrently with amendments to the Metro Plan and TransPlan to reduce level of service for corresponding area (Policy F.15 of Metro Plan and TSI Roadway Policy 2 in TransPlan).

## Proposed Code Language

Proposed additions are in *red italics* and deletions show with double ~~strikeout~~.

- 9.8670**     **Applicability.** *Except within the Downtown Automobile Parking Exempt Area as shown on Map 9.6410(4)(a) Downtown And West University Automobile Parking Exempt Areas,* Traffic Impact Analysis Review is required when one of the following conditions exist:
- (1) The development will generate 100 or more vehicle trips during any peak hour as determined by using the most recent edition of the Institute of Transportation Engineer's Trip Generation. In developments involving a land division, the peak hour trips shall be calculated based on the likely development that will occur on all lots resulting from the land division.
  - (2) The increased traffic resulting from the development will contribute to traffic problems in the area based on current accident rates, traffic volumes or speeds that warrant action under the city's traffic calming program, and identified locations where pedestrian and/or bicyclist safety is a concern by the city that is documented.
  - (3) The city has performed or reviewed traffic engineering analyses that indicate approval of the development will result in levels of service of the roadway system in the vicinity of the development that do not meet adopted level of service standards.
  - (4) For development sites that abut a street in the jurisdiction of Lane County, a Traffic Impact Analysis Review is required if the proposed development will generate or receive traffic by vehicles of heavy weight in their daily operations.

**9.9650**     **TransPlan Policies.**

- (3) **Transportation System Improvements: Roadways.** Motor vehicle level of service policy:
  - (a) Use motor vehicle level of service standards to maintain acceptable and reliable performance on the roadway system. These standards shall be used for:
    1. Identifying capacity deficiencies on the roadway system.
    2. Evaluating the impacts on roadways of amendments to transportation plans, acknowledged comprehensive plans and land-use regulations, pursuant to the TPR (OAR 660-12-0060).
    3. Evaluating development applications for consistency with the land-use regulations of the applicable local government jurisdiction.
  - (b) Acceptable and reliable performance is defined by the following levels of service under peak hour traffic conditions:
    1. *Level of Service F within Eugene's Downtown Automobile Parking Exempt Area;*
    2. Level of Service E within *the portion of* Eugene's Central Area Transportation Study (CATS) area *that is not within Eugene's Downtown Automobile Parking Exempt Area;* and
    3. Level of Service D elsewhere.
  - (c) Performance standards from the OHP shall be applied on state facilities in the Eugene-Springfield metropolitan area.

In some cases, the level of service on a facility may be substandard. The local government jurisdiction may find that transportation system improvements to bring performance up to standard within the planning horizon may not be feasible, and safety will not be compromised, and broader community goals would be better served by allowing a substandard level of service. The limitation on the feasibility of

a transportation system improvement may arise from severe constraints including but not limit to environmental conditions, lack of public agency financial resources, or land use constraint factors. It is not the intent of Policy F-15: Motor Vehicle Level of Service to require deferral of development in such cases. The intent is to defer motor vehicle capacity increasing transportation system improvements until existing constraints can be overcome or develop an alternative mix of strategies (such as: land use measures, TDM, short-term safety improvements) to address the problem.

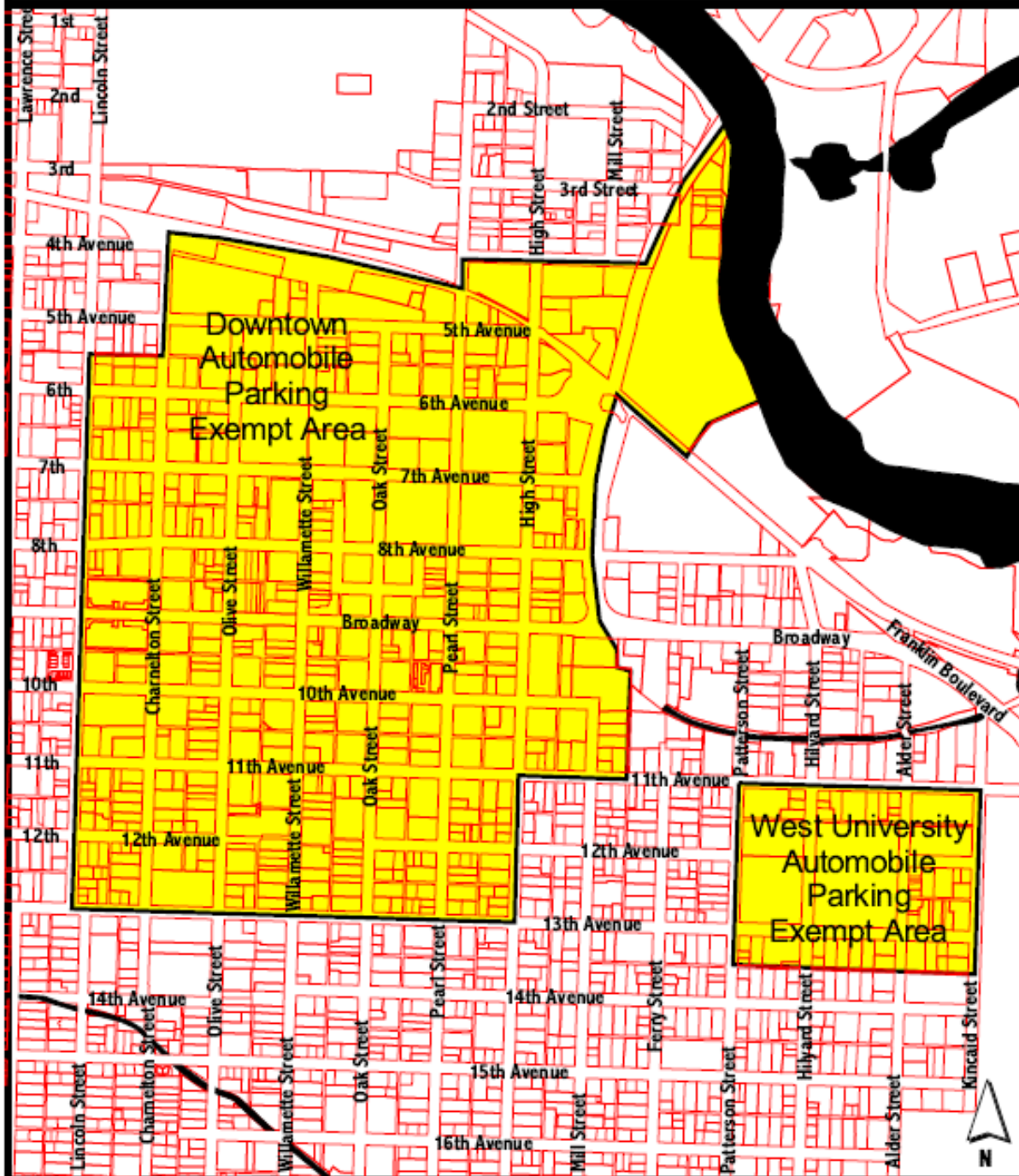
The above change to EC 9.9650 would also need to be made to Policy F.15 of the Metro Plan and TSI Roadway Policy 2 of TransPlan, as they contain the exact language as cited above.

#### **Stakeholder Comments**

- General support for using parking exempt area for TIA exempt area
- Desire for tool to address walk and bike-ability and related facilities
- Maybe we could do TIAs in house – we should have this technology

Map 9.6410(4)(a)

## Downtown And West University Automobile Parking Exempt Areas



## 8. General Commercial Standards Re-organization

### Purpose

Although this proposal does not result in any substantive changes that would facilitate development, it does help with administration and implementation of the general commercial development standards. Currently, this section of the commercial development standards contains general standards and special standards. While the majority of the general standards fall under the heading of special standards, there is little to no distinction between the general and the special standards. For clarity, the special standards heading is removed (effectively making all of the standards general), and additional subheadings are added.

### Concepts

- Re-organize general commercial standard for clarity, by removing the special standards heading (effectively making all of the standards general), and adding additional subheadings.

### Proposed Code Language

Proposed additions are in *red italics* and deletions show with double ~~strikeout~~.

[Note: Does not include all proposed amendments from above – these would be incorporated at time of ordinance creation. Other code section references and figures would need to be changed accordingly.]

#### **9.2170 Commercial Zone Development Standards - General.**

- (1) **Intent.** These commercial zone development standards are intended to achieve the following:
  - (a) Improve the quality and appearance of commercial development in the city.
  - (b) Ensure that such development is compatible with adjacent development and is complementary to the community as a whole.
  - (c) Encourage crime prevention through environmental design, decrease opportunity for crime, and increase user perception of safety.
  - (d) Increase opportunities for use of alternative modes of transportation.
  - (e) Regulate the intensity of use allowed on a site.
  - (f) Control the overall scale of commercial buildings.
  - (g) Promote streetscapes that are consistent with the desired character of the various commercial zones.
  - (h) Promote safe, attractive, and functional pedestrian circulation systems in commercial areas.
- (2) **Application of Standards.** In addition to applicable provisions contained elsewhere in this land use code, the development standards listed below shall apply to all development in commercial zones. ~~except the following:~~
  - ~~(a) Maximum Front Yard Setback,~~
  - ~~(b) Minimum Landscape Area,~~
  - ~~(c) Drive Through Facilities,~~

which shall be subject to the special development standards of EC 9.2171(5), EC 9.2171(8) and EC 9.2171(15). In cases of conflict, the standards specifically applicable in commercial zones shall apply.

**Table 9.2170 Commercial Zone Development ~~General Building Height and Setback~~ Standards**  
**(See EC 9.2171 Special Development Standards for Table 9.2170.)**

	C-1	C-2	C-3	C-4	GO
<b>Building Height (See EC 9.2170(3))</b>					
Maximum Building Height <del>(1) (2) (3)</del>	35 feet	120 feet <del>(2)</del>	150 feet <del>(2)</del>	50 feet <del>(2)</del>	50 feet <del>(3)</del>
<b>Setbacks (See EC 9.2170(4))</b>					
Minimum Front Yard Setback <del>(4) (17)</del>	10 feet	0 feet	0 feet	10 feet	10 feet
Maximum Front Yard Setback <del>(5) (17)</del>	15 feet	15 feet	15 feet	None	15 feet
Minimum Interior Yard Setback <del>(4) (6) (7) (16)</del>	0 feet to 10 feet <del>(6)</del>	0 feet to 10 feet <del>(6)</del>	0 feet	0 feet to 10 feet <del>(6)</del>	0 feet to 10 feet <del>(6)</del>
Minimum Landscape Area <del>(8)</del>	10%	10%	None	10%	10%
<del>Fences (9)</del>					
<del>Outdoor Storage Areas (10)</del>					
<del>Outdoor Merchandise Display (11)</del>					
<del>Garbage Screening (12)</del>					
<del>Utilities (13)</del>					
<del>Delivery and Loading Facilities (14)</del>					
<del>Drive-Through Facilities (15)</del>					
<del>Large Commercial Facilities (See EC 9.2173)</del>					
<del>Large Multi-Tenant Commercial Facilities (See EC 9.2175)</del>					

**~~9.2171 Special Commercial Zone Development Standards for Table 9.2170.~~**

**(3) Building Height**

~~(1)(a)~~ Exceptions to the general height restrictions for commercial structures stated in Table 9.2170 Commercial Zone ~~Development~~ **General Building Height and Setback** Standards are contained in:

- ~~(a)~~ 1. EC 9.6715 Height Limitation Areas.
- ~~(b)~~ 2. EC 9.6720 Height Exemptions for Roof Structures and Architectural Features.

~~(2)(b)~~ Subject to the limitations in subsection ~~(4a)~~ of this section, in the C-2, C-3, or C-4 zones, no portion of a building located within 50 feet of a residential zone shall exceed the maximum building height permitted in the abutting residential zone.

~~(3)(c)~~ Subject to the limitations in subsection ~~(4a)~~ of this section, the maximum permitted building height for main or accessory buildings in the GO zone shall not exceed 35 feet in height within 50 feet of an abutting AG, R-1, or R-2 zone. Otherwise, main and accessory building height maximums shall not exceed 50 feet.

**(4) Setbacks**

~~(4a)~~ Exceptions to the general minimum front and interior yard setback requirements stated in Table 9.2170 Commercial Zone ~~Development~~ **General Building Height and Setback** Standards are contained in:

1. EC 9.6745 Setbacks - Intrusions Permitted.
2. EC 9.6750 Special Setback Standards.

**(5b)** The maximum front yard setbacks stated in Table 9.2170 Commercial Zone Development ~~Development~~ **General Building Height and Setback** Standards, shall apply only to new buildings and any building addition that increases the length of the building facade facing a street, internal accessway, private drive, or shopping street as defined in EC 9.2175(3) by at least 100%. For purposes of this subsection, front yard setback may be measured from a public street or from the edge of the sidewalk furthest from the curb of an internal accessway, private drive, or shopping street. In addition, all new buildings and the portion of the development site specifically affected by the new building are subject to the requirements of this subsection. **(See Figure 9.2174(54)(b) Maximum Front Yard Setbacks, Building Orientation, and Entrances.)**

- (a) 1.** In C-1, at least 80% of all street facing facades of the building must be within the specified maximum front yard setback.
- (b) 2.** In C-2 and C-3, a minimum of 25% of all street facing facades must be within the specified maximum front yard setback, or, orientation to an internal accessway, private drive, or shopping street as defined in EC 9.2175(3) is permitted in compliance with EC 9.2173(4)(a).
- (c) 3.** In GO, at least 60% of all street facing facades of the building must be within the specified maximum front yard setback.
- (d) 4.** Vehicular parking and circulation is not permitted in between the street and the portion of the building that is used to comply with this subsection.
- (e) 5.** Buildings fronting on a street must provide a main entrance facing the street on any facade of the building within the front yard setback. A main entrance is a principal entrance through which people enter the building. A building may have more than one main entrance. Buildings having frontage on more than one street shall provide at least one main entrance oriented to a street.
- (f) 6.** The land between the portion of a building complying with EC 9.2171(5)(a) ~~9.2171(5)(a)~~ **2170(4)(b) 1. or (b) 2.** and a street must be landscaped or paved with a hard surface for use by pedestrians. If a hard surface is provided, the area must contain at least the equivalent of 1 pedestrian amenity for every 200 square feet of hard surface. The use of porous materials for hard surfacing is encouraged. Residential developments are exempt from this subsection. **(See Figure 9.2174(54)(eb) Landscaped or Paved Pedestrian Area with Pedestrian Amenities.)**
- (g) 7.** The maximum front yard setback may be exceeded if the area between the building and the front property line is landscaped or paved for use by pedestrians. The area must contain at least the equivalent of 1 enhanced pedestrian amenity for every 200 square feet of hard surface. **(See Figure 9.2174(54)(eb) Landscaped or Paved Pedestrian Area with Pedestrian Amenities.)**

**(6c)** Where lot lines abut property within a residential zone category, the minimum interior yard setback for any building shall be 10 feet. Within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to this section may be made based on the criteria in EC 9.8030(16).

**(7d)** Minimum interior yard setbacks for large commercial facilities on a lot adjacent to or facing a residential zone shall be 30 feet. Within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to this section may

be made based on the criteria in EC 9.8030(16).

**(46e)** For lots zoned C-1 within the S-JW Jefferson Westside Special Area Zone boundaries as shown on Figure 9.3605, setbacks from all portions of interior lot lines (as that term is defined for purposes of the S-JW Special Area Zone) shall be at least 10 feet from the interior lot line. In addition, at a point that is 20 feet above grade, the setback shall slope at the rate of 10 inches vertically for every 12 inches horizontally (approximately 50 degrees from vertical) away from that lot line.

**(47f) Adjustments.** Except for the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to the minimum and maximum front yard setbacks in this *subsection, except subsection (4)(a)*, may be made, based on criteria at EC 9.8030(2) Setback Standards Adjustment. Within the Downtown Plan Area, adjustments to the minimum and maximum front yard setbacks in this *subsection, except subsection (4)(a)*, may be made, based on the criteria at EC 9.8030(16).

**(85) Landscaping.** ~~In addition to the minimum landscape area requirements of Table 9.2170 Commercial Zone Development Standards, the following standards apply to new buildings, and the portion of the development site specifically affected by the new building and shall be subject to the requirements of this subsection.~~

- (a) Minimum Landscape Area Required. In all commercial zones, except C-3, a minimum of 10 percent of the development site shall be landscaped with living plant materials. All required landscaping shall comply with landscape standards beginning at EC 9.6200 Purpose of Landscape Standards. Any required landscaping, such as for required front or interior yard setbacks or off-street parking areas, shall apply toward the development site minimum landscape requirement. The area of exterior landscaping on the roof of a building or exposed terrace may be used to meet the 10% minimum landscaping standard. Up to 50% of the landscape area may be a hard surface for recreational or enhanced pedestrian space.
- (b) Minimum Landscape Standard. Unless otherwise specified in this land use code, required landscape areas must, at a minimum, comply with EC 9.6210(1) Basic Landscape Standard (L-1).
- (c) Landscaping In Front Yard Setbacks. If a front yard setback contains a landscape planting bed, the planting bed shall be a minimum of 7 feet in width and shall comply, at a minimum, with EC 9.6210(1) Basic Landscape Standard (L-1).
- (d) Landscaping In Interior Yard Setbacks Abutting Residential Zones. Landscape planting beds within the interior yard setbacks abutting a residential zone shall be a minimum of 7 feet in width and shall comply with EC 9.6210(3) High Screen Landscape Standard (L-3).
- (e) Street Trees. Street tree requirements are specified in EC 7.280 Street Tree Program - Policies, Standards, Procedure.
- (f) Within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to subsections ~~(8)(a)~~, ~~(8)(b)~~ and ~~(8)(c)~~ may be made based on the criteria in EC 9.8030(16).

**(96) Fences.**

- (a) Types. The type of fence, wall or screen used in any situation is limited only by specific requirements stated in landscape standards beginning at EC 9.6200 Purpose of Landscape Standards.

(b) Locations and Heights.

1. Fences up to 42 inches in height are permitted within the minimum or maximum front yard setback whichever is greater.
2. Fences up to 8 feet high are allowed in interior yard setbacks.
3. The height of fences that are not in required setback areas is the same as the regular height limits of the zone.
4. Fences must meet standards in EC 9.6780 Vision Clearance Area. (See **Figure 9.2174(96) Fencing Standards in Commercial Zones and Figure 9.0500 Vision Clearance Area.**)

- (c) Adjustments. Within the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to subsections (96)(a) and (94)(b) may be made based on the criteria in EC 9.8030(16).

**(497) Outdoor Storage Areas.** Except for plant nurseries, outdoor storage is not permitted in any commercial zone. All merchandise to be stored must be enclosed entirely within buildings or structures.

**(448) Outdoor Merchandise Display.**

- (a) Except for plants and garden supply products, outdoor merchandise display is not allowed in C-1 and GO zones.
- (b) In the C-2 and C-4 zones, outdoor display of the uses listed in subsection 1. of this subsection, is permitted when in conformance with the standards listed in subsection 2. of this subsection.
  1. Plants and garden supply products; motor vehicle sales, service, and repair; new and used boat sales; large equipment sales and rentals; service station pump islands; vending machines; manufactured home sales; children's outdoor play equipment; and hot tubs.
  2. Outdoor merchandise display is not permitted in required setback areas. Except for plant and garden supply displays, outdoor display areas shall be set back a minimum of 7 feet from the front lot lines with required setbacks landscaped to at least the EC 9.6210(1) Basic Landscape Standard (L-1).
- (c) In the C-3 zone, outdoor merchandise display is permitted if all products are placed in an enclosure after business hours.
- (d) Except for the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to subsection (b)2. of this section may be made based on criteria in EC 9.8030(2)(d). Within the Downtown Plan Area, adjustments to subsection (448)(b)2. may be made based on the criteria in EC 9.8030(16).

**(429) Garbage Screening.** All outdoor garbage collection areas shall be screened on all sides within a solid perimeter enclosure that meets the following standards:

- (a) Materials within enclosures shall not be visible from streets and adjacent properties.
- (b) Required screening shall comply with EC 9.6210(6) Full Screen Fence Landscape Standard (L-6).
- (c) Garbage collection areas shall not be located within required setbacks. Trash or recycling receptacles for pedestrians are exempt from these requirements.

**(4310) Underground Utilities.** All utilities on the development site shall be placed underground. Except for the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to this section may be made based on criteria in EC 9.8030(5). Within the Downtown Plan Area, adjustments to this section may be made based on criteria in EC 9.8030(16). Refer also to EC 9.6775.

**(4411) Delivery and Loading Facilities.**

- (a) Delivery and loading facilities are not permitted in required setback areas.
- (b) On lots abutting parcels with a residential zone, delivery and loading facilities shall be set back a minimum of 10 feet from property lines with required interior yard setbacks landscaped to at least the standards in EC 9.6210(4) High Wall Landscape Standard (L-4).

**(4512) Drive-Through Facilities.**

- (a) Application. The regulations in (b) through (e) of this subsection apply to the establishment of new drive through facilities, the addition of travel lanes for existing drive-through facilities in existing developments, and the relocation of an existing drive-through facility.
- (b) Drive-Through Facilities in C-1 Zone. Drive-through facilities are not permitted in C-1 zones.
- (c) Service Areas Setback and Landscaping. Service areas and stacking lanes shall be set back a minimum of 10 feet from all lot lines. Setback areas abutting a street shall be landscaped to at least the standards in EC 9.6210(1) Basic Landscape Standard (L-1). Interior yard setback areas must be landscaped to at least the standards in EC 9.6210(3) High Screen Landscape Standard (L-3).
- (d) Driveway Entrances. All driveway entrances, including stacking lane entrances, must be at least 100 feet from an intersection, as measured along the property line from the tangent point of a corner radius and the closest edge of a driveway.
- (e) Stacking Lanes. Design of stacking lanes shall conform with the requirements of EC 9.6415 Loading and Drive-Through Design Standards.
- (f) Adjustments. Except for lots adjacent to land zoned residentially:
  - 1. Outside of the Downtown Plan Area as shown on Map 9.2161(6) Downtown Plan Map, adjustments to subsection (c) Service Areas Setback and Landscaping may be made based on criteria at EC 9.8030(2) Setback Standards Adjustment.
  - 2. Within the Downtown Plan Area adjustments to subsection (c) Service Areas Setback and Landscaping and subsection (e) Stacking Lanes may be made based on the criteria at EC 9.8030(16).

**Stakeholder Comments**

General support. Simplicity and clarity is good.

## Preliminary Findings

### Downtown/Mixed Use Land Use Code and Metro Plan/TransPlan Amendments (City Files CA 13-1 and MA 13-1)

#### Overview

This package of code and plan amendments is intended to facilitate desired mixed use development for downtown, along transit corridors and in commercial areas. Consistent with several strategies in the Envision Eugene proposal, the purpose of these amendments is to facilitate compact urban development in the downtown, on key transit corridors, and in core commercial areas by changing land use regulations to better align with Envision Eugene. These amendments are also necessary as part of the city's strategy to accommodate the city's 20 year need for commercial and multi-family housing inside the current urban growth boundary (UGB). Specifically, these amendments are part of a package of land use efficiency strategies the city is relying on to accommodate approximately 400 commercial jobs and 1,600 multi-family homes inside the UGB by increasing the likelihood of redevelopment in the downtown, along transit corridors and in core commercial areas. The code amendments address the following topic areas:

- Housing in Commercial Zones
- Surface Parking Limitation in the C-3 Major Commercial Zone
- Large Commercial Facilities Standards in Downtown
- Commercial Landscaping Standards
- Nodal Development (/ND) Overlay Zone
- Transit Oriented Development (/TD) Overlay Zone
- Traffic Impact Analysis within Downtown Parking Exempt Area
- General Commercial Standards (housekeeping)

Related to the code amendment to eliminate the traffic impact analysis within the downtown parking exempt area, a concurrent Metro Plan Amendment would revise a policy in the Metro Plan and TransPlan to reduce the acceptable performance standard (level of service) for the corresponding area.

#### Land Use Code Amendments (CA 13-1)

Eugene Code Section 9.8065 requires that the following approval criteria (in ***bold italics***) be applied to a code amendment:

- (1) The amendment is consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.***

*Goal 1 - Citizen Involvement.* *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The City has acknowledged provisions for citizen involvement which insure the opportunity for citizens to be involved in all phases of the planning process and set out requirements for such involvement. The amendments do not amend the citizen involvement program. The process for

adopting these amendments complied with Goal 1 because it is consistent with the citizen involvement provisions.

Prior to the formal adoption process, community stakeholders with experience and expertise in downtown and mixed use development gave feedback on the concepts and code language. These stakeholders included property owners, neighborhood advocates, developers, commercial brokers, architects, and the Chamber of Commerce. The Planning Commission public hearing on the proposal was duly noticed to all neighborhood organizations, community groups and individuals who have requested notice, as well as to the City of Springfield and Lane County. In addition, notice of the public hearing was also published in the Register Guard. The City Council will hold a duly noticed public hearing to consider approval, modification, or denial of the code amendments. These processes afford ample opportunity for citizen involvement consistent with Goal 1. Therefore, the proposed ordinance is consistent with Statewide Planning Goal 1.

*Goal 2 - Land Use Planning.* *To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

The Eugene land use code specifies the procedure and criteria that were used in considering these amendments. The record shows that there is an adequate factual base for the amendments. The Goal 2 coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the City and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens. To comply with the Goal 2 coordination requirement, the City engaged in an exchange about the subject of these amendments with all of the affected governmental units. Specifically, the City provided notice of the proposed action and opportunity to comment to Lane County, Springfield and the Department of Land Conservation and Development. There are no exceptions to Statewide Planning Goal 2 required for these amendments. Therefore, the amendments are consistent with Statewide Planning Goal 2.

*Goal 3 - Agricultural Lands.* *To preserve agricultural lands.*

The amendments are for property located within the urban growth boundary and do not affect any land designated for agricultural use. Therefore, Statewide Planning Goal 3 does not apply.

*Goal 4 - Forest Lands.* *To conserve forest lands.*

The amendments are for property located within the urban growth boundary and do not affect any land designated for forest use. Therefore, Statewide Planning Goal 4 does not apply.

*Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources.* *To conserve open space and protect natural and scenic resources.*

*OAR 660-023-0250(3) provides: Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*

*(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use*

*regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*

- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

These amendments do not create or amend the City's list of Goal 5 resources, do not amend a code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, do not allow new uses that could be conflicting uses with a significant Goal 5 resource site and do not amend the acknowledged urban growth boundary. Therefore, Statewide Planning Goal 5 does not apply.

*Goal 6 - Air, Water and Land Resource Quality.* *To maintain and improve the quality of the air, water and land resources of the state.*

Goal 6 addresses waste and process discharges from development, and is aimed at protecting air, water and land from impacts from those discharges. The amendments do not affect the City's ability to provide for clean air, water or land resources. Therefore, Statewide Planning Goal 6 does not apply.

*Goal 7 - Areas Subject to Natural Disasters and Hazards.* *To protect life and property from natural disasters and hazards.*

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, land slides, earthquakes and related hazards, tsunamis and wildfires. The Goal prohibits a development in natural hazard areas without appropriate safeguards. The amendments do not affect the City's restrictions on development in areas subject to natural disasters and hazards. Further, the amendments do not allow for new development that could result in a natural hazard. Therefore, Statewide Planning Goal 7 does not apply.

*Goal 8 - Recreational Needs.* *To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The amendments do not affect the City's provisions for or access to recreation areas, facilities or recreational opportunities. Therefore, Statewide Planning Goal 8 does not apply.

*Goal 9 - Economic Development.* *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The Administrative Rule for Statewide Planning Goal 9 (OAR 660, Division 9) requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The Eugene Commercial Lands Study (1992) was adopted by the City of Eugene as a refinement of the

Metro Plan, and complies with the requirements of Goal 9 and its Administrative Rule.

The Eugene Commercial Lands Study acknowledged that the inventory of commercial land is dynamic and that different commercial services need to be accommodated through a variety of means. An emphasis of the study is to encourage higher intensity in-fill and redevelopment of commercial lands by constraining the supply of new commercial land. Findings addressing the relevant policies of the Eugene Commercial Lands Study are provided below under EC 9.8065 (2), and are incorporated herein by reference.

The amendments are specifically intended to facilitate downtown and mixed use development and redevelopment. The amendments do not affect the amount of land designated or zoned for commercial use and will have no direct impact on the existing supply of commercially designated land. Therefore, the code amendments are consistent with Statewide Planning Goal 9.

*Goal 10 - Housing.* *To provide for the housing needs of citizens of the state.*

Goal 10 requires that communities plan for and maintain an inventory of buildable residential land for needed housing units. Several of the amendments increase the possibility for development or redevelopment of properties downtown or within the C-2 Community Commercial zone for residential uses. However, the amendments do not impact the supply or availability of residential lands included in the documented supply of “buildable land” that is available for residential development as inventoried in the acknowledged 1999 Residential Lands Study. Therefore, the amendments are consistent with Statewide Planning Goal 10.

*Goal 11- Public Facilities and Services.* *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

The amendments do not affect the City’s provision of public facilities and services. Therefore, Statewide Planning Goal 11 does not apply.

*Goal 12- Transportation.* *To provide and encourage a safe, convenient and economic transportation system.*

The Transportation Planning Rule (OAR 660-012-0060) contains the following requirement:

- (1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:
  - (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
  - (b) Change standards implementing a functional classification system; or*
  - (c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted**

*TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

- (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

The proposed amendments do not change the functional classification of a transportation facility or change the standards implementing a functional classification system. Therefore, the amendments do not have a significant effect under (a) or (b). In regards to (c), the level of residential and commercial development currently permitted through existing code and zoning regulations will remain the same as a result of these amendments. Therefore, the amendments do not significantly affect any existing or future transportation facilities.

Regarding the code amendment to eliminate the traffic impact analysis requirement within the downtown parking exempt area and the concurrent plan amendment to reduce the level of service to F for the corresponding area, removal of this local mechanism to evaluate mobility within a limited geographic area, and the policy decision to accept potentially increased levels of congestion within this area do not allow for an increase in traffic generation or the degradation of any transportation facilities. Rather, these amendments recognize that due to the unique characteristics of this area, the traffic impact analysis tool has limited to no benefit. These unique characteristics include an established gridded street pattern; multiple lower and higher order streets that enter and exit the area; numerous options for distribution and assignments of projected trips; lower speeds; ample facilities for alternative modes; unlikelihood that new intersections, new street alignments or widths would be proposed; development is primarily redevelopment of existing properties with minimal to zero setbacks; and existing access management standards to control new driveway locations. Additionally, the Transportation Planning Rule provides for this tool (change in performance standard) as a policy choice for cities to consider in transportation/land use planning. As such, the reduction itself does not create an impact on the transportation system under this criterion.

Further details regarding the changes to the policy language of the Metro Plan and TransPlan to amend the relevant level of service are provided under the findings related to consistency with the Metro Plan and applicable adopted plans at EC 9.8065(2) and under the findings related to the Metro Plan and TransPlan amendment at EC 9.7730(3)

Based on the above findings, the amendment is consistent with Statewide Planning Goal 12.

*Goal 13 - Energy Conservation.* *To conserve energy.*

The amendments do not impact energy conservation. Therefore, Statewide Planning Goal 13 does not apply.

*Goal 14 - Urbanization. To provide for an orderly and efficient transition from rural to urban land use.*

The amendments do not affect the City's provisions regarding the transition of land from rural to urban uses. Therefore, Statewide Planning Goal 14 does not apply.

*Goal 15 - Willamette River Greenway. To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The amendments do not contain any changes that affect the Willamette River Greenway regulations, therefore, Statewide Planning Goal 15 does not apply.

*Goal 16 through 19 - Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources.*

There are no coastal, ocean, estuarine, or beach and dune resources related to the property effected by these amendments. Therefore, these goals are not relevant and the amendments will not affect compliance with Statewide Planning Goals 16 through 19.

**(2) *The amendment is consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.***

**Applicable Metro Plan Policies**

The following policies from the *Metro Plan* (identified below in *italics*) are applicable to these amendments. To the extent that the following policies constitute mandatory approval criteria, based on the findings provided below, the amendments are consistent with and supported by the applicable provisions of the *Metro Plan*.

**Residential Land Use and Housing Element**

***Residential Density Policies:***

- A.13 *Increase overall residential density in the metropolitan area by creating more opportunities for effectively designed in-fill, redevelopment, and mixed use while considering impacts of increased residential density on historic, existing and future neighborhoods.*
- A. 14 *Review local zoning and development regulations periodically to remove barriers to higher density housing and to make provision for a full range of housing options.*

To the extent this policy applies to commercial lands, this package of amendments creates opportunities for, and removes barriers to, higher density housing and mixed use opportunities by allowing housing on the ground floor in the C-2 Community Commercial zone, and one and two residential units in commercial buildings within the C-3 Major Commercial zone, consistent with these

policies. The city's multi-family development standards will continue to apply to buildings that are entirely residential, thus ensuring that building and site design are considerations.

#### *Housing Type and Tenure Policies*

*A.19 Encourage residential developments in or near downtown core areas in both cities.*

Consistent with this policy, the amendments provide for more opportunities for residential development in and near the downtown core area of Eugene, by allowing housing on the ground floor in the C-2 Community Commercial zone, and by allowing one and two residential units in commercial buildings within the C-3 Major Commercial zone.

#### *Design and Mixed Use Policies*

*A.22 Expand opportunities for a mix of uses in newly developing areas and existing neighborhoods through local zoning and development regulations.*

The purpose of these amendments is to facilitate desired mixed use development for downtown, along transit corridors and in commercial areas, including allowing more opportunities for housing in commercial areas, consistent with this policy.

*A.23 Reduce impacts of higher density residential and mixed-use development on surrounding uses by considering site, landscape, and architectural design standards or guidelines in local zoning and development regulations.*

To the extent this policy applies, the amendments are consistent as the existing applicable site, landscape and design standards will remain. Furthermore, these amendments do not allow for increased density or intensity of development, and are intended to apply within more urban settings, thereby minimizing impacts on surrounding neighborhoods.

#### Economic Element

*B.14 Continue efforts to keep the Eugene and Springfield central business districts as vital centers of the metropolitan area.*

Several of the amendments apply specifically to the Downtown Plan area. The amendments will encourage economic activities by increasing the flexibility of the /ND Nodal Development and /TD Transit Oriented Development Overlay Zones, as well as better align the commercial development standards with desired downtown development.

#### Transportation Element

#### *Land Use Policies*

*F.2 Support application of the nodal development strategy in designated areas through information, technical assistance, or incentives.*

Consistent with this policy, the amendments to provide flexibility and clarity to the /ND Nodal Development Overlay Zone and the amendments that apply within the downtown (which is

designated nodal development) help to encourage and incentivize nodal development, thereby supporting the concept.

- F.3 Provide for transit-supportive land use patterns and development, including higher intensity, transit-oriented development along major transit corridors and near transit stations; medium- and high-density residential development within ¼ mile of transit stations, major transit corridors, employment centers, and downtown areas; and development and redevelopment in designated areas that are or could be well served by existing or planned transit.*

The purpose of these amendments is to facilitate desired mixed use development for downtown, along transit corridors and in commercial areas, consistent with this policy. By increasing flexibility and clarity in the /ND Nodal Development Overlay Zone and the /TD Transit Oriented Development Overlay Zone, the amendment will allow for increased development opportunities and economic activity within downtown and designated nodal areas. Increased commercial development in downtown and along key transit corridors supports a transit-supportive land use pattern because of the location of the existing and planned transit routes within these areas.

- F.4 Require improvements that encourage transit, bicycles, and pedestrians in new commercial, public, mixed use, and multi-unit residential development.*

To the extent this policy applies, the amendments are consistent with this policy in that the existing land use code standards related to improvements for transit, bicycles and pedestrians are not being changed as a result of the amendments. Given that the purpose of these amendments is to facilitate downtown and mixed used use development, which emphasizes alternative modes of travel, the amendments support this policy.

#### *Transportation System Improvements: Roadways*

- F.15 Motor vehicle level of service policy:*
- a. Use motor vehicle level of service standards to maintain acceptable and reliable performance on the roadway system. These standards shall be used for:*
    - (1) Identifying capacity deficiencies on the roadway system.*
    - (2) Evaluating the impacts on roadways of amendments to transportation plans, acknowledged comprehensive plans and land-use regulations, pursuant to the TPR (OAR 660-012-0060).*
    - (3) Evaluating development applications for consistency with the land-use regulations of the applicable local government jurisdiction.*
  - b. Acceptable and reliable performance is defined by the following levels of service under peak hour traffic conditions: LOS E within Eugene's Central Area Transportation Study (CATS) area, and LOS D elsewhere.*
  - c. Performance standards from the OHP shall be applied on state facilities in the Eugene-Springfield metropolitan area.*

*In some cases, the level of service on a facility may be substandard. The local government jurisdiction may find that transportation system improvements to bring performance up to standard within the planning horizon may not be feasible,*

*and safety will not be compromised, and broader community goals would be better served by allowing a substandard level of service. The limitation on the feasibility of a transportation system improvement may arise from severe constraints, including but not limited to environmental conditions, lack of public agency financial resources, or land use constraint factors. It is not the intent of TSI Roadway Policy #2: Motor Vehicle Level of Service to require deferral of development in such cases. The intent is to defer motor vehicle capacity increasing transportation system improvements until existing constraints can be overcome or develop an alternative mix of strategies (such as: land use measures, TDM, short-term safety improvements) to address the problem.*

Concurrent with the land use code amendment to eliminate the requirement for a traffic impact analysis within the downtown parking exempt area is an amendment to this Metro Plan and identical TransPlan policy to reduce the acceptable performance standard (from Level of Service E to F) for the corresponding area. As amended, the amendments are consistent with this policy.

*F.17 Manage the roadway system to preserve safety and operational efficiency by adopting regulations to manage access to roadways and applying these regulations to decisions related to approving new or modified access to the roadway system.*

Consistent with this policy, the City of Eugene adopted access management standards in 2010 that regulate the location of new and modified accesses to streets. These amendments do not modify or change the applicability of these standards.

#### *Finance*

*F.36 Require that new development pay for its capacity impact on the transportation system.*

Consistent with this policy, developments will continue to be subject to transportation system development charges (SDCs). These amendments do not modify or change the applicability of SDCs.

#### **Applicable Refinement Plans**

Given the broad applicability of these amendments (some apply downtown, some apply within the C-2 Community Commercial zone, which is found city wide, and some apply within the /ND Nodal Development and the /TD Transit Oriented Development overlay zones), all adopted refinement plans were reviewed for consistency.

No relevant policies were found in the following adopted refinement plans:

- Bethel-Danebo Refinement Plan (1982)
- Bethel-Danebo Refinement Plan Phase II (1977)
- Comprehensive Stormwater Management Plan (1993)
- Laurel Hill Neighborhood Plan (1982)
- Fairmount/U of O Special Area Study (1982)
- 19th and Agate Special Area Study (1988)
- Riverfront Park Study (1985)
- River Road-Santa Clara Urban Facilities Plan (1987)

- South Hills Study (1974)
- South Willamette Subarea Study (1987)
- Walnut Station Specific Area Plan (2010)
- Westside Neighborhood Plan (1987)
- Whiteaker Plan (1994)
- Willow Creek Special Area Study (1982)
- Resolution No. 3862 Adopting the West 11th Commercial Land Use Policy and Refining the Eugene-Springfield Metropolitan Area General Plan (1984)
- Resolution No. 3885 Establishing Areas for the Application of C-4 Commercial-Industrial District Zoning, and Amending Resolution No. 3862 (1984)

Findings addressing relevant provisions of applicable refinement plans are provided below.

### **Central Area Transportation Study (2004)**

1. *Promote the development of a transportation system within the downtown area that supports the goals of the Downtown Plan, enhances the livability of downtown, preserves the livability and economic vitality of areas within and directly adjacent to the CATS boundary, and provides for the safe and efficient movement of motor vehicles, pedestrians, bicycles and transit vehicles.*

To the extent that this policy constitutes mandatory approval criteria, the City of Eugene has undertaken a number of actions to promote a transportation system within downtown that is consistent with this policy. These actions include transportation system plan updates, new access management standards, improved parking lot standards, parking exempt areas, transportation demand programs, support for transit and alternative modes, revised parking minimums and maximums, and continued emphasis on compact urban development through a variety of planning efforts. The implementation strategies associated with this policy are geared at actions that the city, not individual project developers, could take to implement these policies, including converting one way streets to two ways, making changes in the courthouse district, studying a north-south arterial, and studying the feasibility of a fixed rail trolley.

8. *Support intensive development in the downtown area by balancing new parking supply with specific area demands and ensure an adequate supply of parking is available downtown to meet the needs of residents, workers and customers of downtown facilities.*

To the extent that this policy constitutes mandatory approval criteria, the City of Eugene has undertaken several actions to balance parking supply with demand, including establishing and maintaining parking exempt areas, floor area ratio requirements and city parking programs. Additionally, the city has provided incentives to developers to redevelop sites throughout downtown, including several former surface parking lots.

### **Eugene Commercial Lands Study (1992)**

- 6.0 *Promote redevelopment of existing commercial areas and compact, dense growth by encouraging business to revitalize and reuse existing commercial sites.*

To the extent that this policy constitute mandatory approval criteria, the amendments are consistent in that the amendments assist private developers to invest in the downtown and other commercial areas by removing impediments in the land use code

*12.0 Concentrate development in existing commercial areas to minimize traffic impacts on the rest of the city.*

*15.0 Improve the quality of planning for commercial traffic impacts.*

These policies apply to the siting of new commercial areas (see Page III-9 of the Eugene Commercial Lands Study). As no lands are being re-designated to commercial as part of these amendments, these policies are not applicable.

*26.0 Encourage parking lot design that is attractive, does not exceed a reasonable ratio or parking spaces per building areas, and support compact growth.*

To the extent that this policy constitutes mandatory approval criteria, the amendments are consistent in that the amendments do not revise or otherwise modify the parking lot landscape or design standards. The City of Eugene has addressed and completed a number of the implementation strategies suggested to implement this policy, including increased parking lot landscape requirements, height limits on light fixtures, establishing parking exempt areas and requiring site improvements to support alternative transportation.

#### **Eugene Downtown Plan (2004)**

The Downtown Plan contains numerous policies supporting mixed use and density in downtown. The Downtown Plan states that, “[w]ith the exception of Policy IV 3, relating to EWEB’s riverfront property, the policies in the Downtown Plan are aspirational, and cannot be the basis for denial of public or private proposals regarding change in the downtown.” Even though the policies are not mandatory, it is worth noting that the proposal is consistent with the following policies:

*I.2. Downtown development shall support the urban qualities of density, vitality, livability and diversity to create a downtown, urban environment.*

*II.2. Use downtown development tools and incentives to encourage development that provides character and density downtown.*

*V.1. Stimulate multi-unit housing in the downtown core and on the edges of downtown for a variety of income levels and ownership opportunities.*

The intent of the code amendments is to facilitate desired dense, mixed-use downtown development by better aligning the land use code with desired outcomes. The code amendments address these policies by providing additional flexibility for housing and downtown projects while still achieving an equivalent or higher quality urban environment.

#### **Jefferson Far West Refinement Plan (1983)**

Although there are no policies in this refinement plan that directly address the amendments or constitute mandatory approval criteria, the following policy in the Neighborhood Economic Development Element of the plan lends general support for the amendments:

*3.0 Take actions to continue to attract investment by the private sector in the central city.*

Additionally, the following policies in the Commercial/Industrial Element lend general support for the amendments:

*1.0 Promote a mix of mutually supportive land uses which will help stimulate neighborhood-based economics.*

*2.0 Encourage both public and private actions which will improve the overall appearance of commercial areas and the condition of non-residential structures.*

### **TransPlan (2002)**

The applicable policies from TransPlan are addressed above, under the Metro Plan, as these plans contain identical transportation policies. Those findings are incorporated herein by reference.

### **West University Refinement Plan (1982)**

#### *Transportation and Parking Policy:*

- 1. The adverse effects of motor vehicle movement and parking shall be mitigated as much as possible.*

A portion of the downtown parking exempt area falls within the boundaries of the West University Refinement Plan. This area has unique characteristics that lessen the need to mitigate motor vehicle movement through a traffic impact analysis. These unique characteristics include lower adopted mobility standards than all other areas in the city; an established grid pattern of interconnected streets; multiple lower and higher order streets that enter and exit the downtown core; numerous options for distribution and assignments of projected trips; generally lower speeds; ample transit facilities; infrastructure to support alternate modes of travel; access management standards to control new driveway locations; and the unlikelihood that new intersections, new street alignments or widths or additional lanes would be proposed or exacted given the existing development patterns. The traffic impact analysis will remain applicable to all other areas within the West University Refinement Plan.

#### *Land Use, Housing and Commerce Policy:*

- 9. The City will encourage residential uses in all parts of the plan area. The intent of this policy is to provide housing opportunities in all zoning districts in the plan area, but not to the exclusion of other uses in non-residential areas.*

To the extent that this policy constitutes mandatory approval criteria, the code amendments are consistent in that the amendments allow for, but do not mandate, additional housing opportunities in the C-2 Community Commercial zone.

### **Willakenzie Area Plan (1992)**

Although there are no policies in this refinement plan that directly address the amendments or constitute mandatory approval criteria, the following land use policy lends general support for the amendments:

7. *Mixed use developments that combine living, working and shopping opportunities shall be encouraged in the study area.*

Based on the above findings, the proposal is consistent with and supported by the applicable provisions of these adopted plans.

### **(3) *The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone, in the case of establishment of a special area zone.***

The amendments do not establish a special area zone. Therefore, this criterion does not apply to these amendments.

### **Metro Plan and TransPlan Amendment (City File MA 13-1)**

Concurrent with the land use code amendment to eliminate the requirement for a traffic impact analysis within the downtown parking exempt area is an amendment to the Metro Plan and TransPlan policies (Transportation System Improvements: Roadway Policy F.15 of Metro Plan and Transportation System Improvements: Roadway Policy 2 in TransPlan) to reduce the acceptable performance standard (from Level of Service E to F) for the corresponding area

The policy (which is identical in both plans) with the amendment showing in **bold underline italics** is provided below:

*Motor vehicle level of service policy:*

- (a) *Use motor vehicle level of service standards to maintain acceptable and reliable performance on the roadway system. These standards shall be used for:*
  1. *Identifying capacity deficiencies on the roadway system.*
  2. *Evaluating the impacts on roadways of amendments to transportation plans, acknowledged comprehensive plans and land-use regulations, pursuant to the TPR (OAR 660-12-0060).*
  3. *Evaluating development applications for consistency with the land-use regulations of the applicable local government jurisdiction.*
- (b) *Acceptable and reliable performance is defined by the following levels of service under peak hour traffic conditions:*
  1. **Level of Service F within Eugene's Downtown Automobile Parking Exempt Area;**
  2. **Level of Service E within the portion of Eugene's Central Area Transportation Study (CATS) area that is not within Eugene's Downtown Automobile Parking Exempt Area; and**
  3. **Level of Service D elsewhere.**

- (c) *Performance standards from the OHP shall be applied on state facilities in the Eugene-Springfield metropolitan area.*

*In some cases, the level of service on a facility may be substandard. The local government jurisdiction may find that transportation system improvements to bring performance up to standard within the planning horizon may not be feasible, and safety will not be compromised, and broader community goals would be better served by allowing a substandard level of service. The limitation on the feasibility of a transportation system improvement may arise from severe constraints including but not limit to environmental conditions, lack of public agency financial resources, or land use constraint factors. It is not the intent of Policy F-15: Motor Vehicle Level of Service to require deferral of development in such cases. The intent is to defer motor vehicle capacity increasing transportation system improvements until existing constraints can be overcome or develop an alternative mix of strategies (such as: land use measures, TDM, short-term safety improvements) to address the problem.*

Eugene Code Section 9.7730(3) requires that the following approval criteria (in ***bold italics***) be applied to a Metro Plan/TransPlan amendment:

***(3) Criteria for Approval of Plan Amendment. The following criteria shall be applied by the city council in approving or denying a Metro Plan amendment application:***

- (a) The amendment must be consistent with the relevant Statewide Planning Goals adopted by the Land Conservation and Development Commission; and***

Findings addressing the relevant Statewide Planning Goals are addressed above under EC 9.8065(1), and are incorporated herein by reference as demonstration of consistency with this criterion.

- (b) Adoption of the amendment must not make the Metro Plan internally inconsistent.***

The Metro Plan and TransPlan text amendment to reduce to level of service within the Downtown Parking Exempt Area from level of service E to F will not create an internal conflict with the remainder of the Metro Plan. No other text changes and no diagram changes are necessary to ensure internal consistency with the proposed text amendments; adoption of this amendment will not make the Metro Plan internally consistent. The findings addressing the relevant policies of the Metro Plan and TransPlan are addressed above under EC 9.8065(2) and are incorporated herein by reference as demonstration of consistency with this criterion.

**AGENDA ITEM SUMMARY**  
**May 14, 2013**

**To:** Eugene Planning Commission

**From:** Peggy Keppler, Engineering Development Review Manager

**Subject:** **Public Hearing**  
**Proposed Amendments to Stormwater Development Standards EC 9.6790-9.6796**

**ISSUE STATEMENT**

The Planning Commission is requested to hold a public hearing and begin deliberation regarding proposed amendments to the land use code for Stormwater Development Standards, Eugene Code 9.6790-9.6796 (Attachment A).

**BACKGROUND**

Stormwater Development Standards regulate the location, design, construction, and maintenance of stormwater facilities applicable to the development of new and replaced impervious surfaces. The current Stormwater Development Standards, required by the federal Clean Water Act and the City's municipal stormwater permit, have been in place since July 2006. They are an important element of the City's multi-faceted stormwater program aimed at protecting and improving the water quality of Eugene's receiving streams including Amazon Creek and the Willamette River.

The existing code standards reduce pollutants before discharging runoff from the development site to the city's stormwater system and require applicants to demonstrate their stormwater runoff is discharged to locations that have capacity to convey the flood control storm event. The proposed amendments will further reduce pollutants and mitigate the volume, duration, time of concentration and rate of stormwater runoff to the city stormwater system. Changes to the stormwater development standards are being proposed in response to stricter federal and state water quality regulations which must be implemented by January 1, 2014 as outlined in the City's municipal stormwater permit, and to simplify and clarify flood control-related requirements.

**Summary of Proposed Amendments**

**EC 9.0500; 9.4780; 9.6790; and 9.8030** are being amended to change the term "pollution reduction" terminology to "stormwater quality". Existing code standards reduce pollutants before discharging runoff from the development site to the city's stormwater system; yet, the proposed amendments will further enhance stormwater quality by reducing pollutants and mitigating the volume, duration, time of concentration and rate of stormwater runoff to the city stormwater system.

**EC 9.6791** is being amended to change the term "destination" to "flood control" and clarify that the requirement to submit documentation that establishes that the runoff from new development will be disposed of into existing drainage facilities having the capacity to handle the stormwater runoff will not be required when discharging to drainage systems that were designed and constructed with the intent to provide capacity for the runoff from the proposed development application site. Flood control

standards reduce flood damage and risks to flooding. In hydrologic simulation and drainage planning, both the risk of flooding and level of flood protection against those risks are measured using the concept of reoccurring storm events. The City of Eugene designs and constructs its public stormwater conveyance systems based on established flood control storm events and the estimated runoff discharged from land areas within the drainage basin as if it were built out at the planned zoning type. Therefore, development proposals need only assure the design assumptions of discharge included the proposed development site and type of development being proposed. If no design assumptions are available the applicant can estimate the needed capacity of the discharge system by completing the Rational Method for the drainage basin.

**EC 9.6792** is being amended to implement a best management practices (BMP) hierarchy of on-site stormwater management techniques that emphasize and promote low impact development (LID) and green infrastructure approaches which improve water quality and increase capacity in the city's stormwater system. Low impact development and green infrastructure approaches emphasize practices that seek to mimic the site's hydrology before development, thereby reducing negative effects of stormwater runoff on nearby rivers, lakes, streams and wetlands. LID practices use design approaches which promote natural systems for stormwater retention, infiltration and conveyance.

The amendments will require applicants to select stormwater quality facilities from the Stormwater Management Manual based on the priority of infiltrating, filtering, and mechanical treatment. Applications that do not include the development of impervious surfaces will not be required to select the facility type, but will be required to prepare a site plan that delineates the site conditions relevant to the future selection of facility type, namely identifying where site conditions would not conducive to infiltration. Applications that include the development of impervious surfaces will be required to select the facility type, size the facility, and locate the facility in compliance with the Stormwater Management Manual.

While the amendments will establish a hierarchy for selecting stormwater quality facilities, applicants that do not have sufficient land to install infiltration or filtration facilities can utilize mechanical treatment facilities. Mechanical treatment facilities are a current stormwater treatment option and do not restrict any buildable land area because mechanical treatment facilities can be placed under impervious surfaces. An applicant will be able to demonstrate insufficient land area by submitting a report setting forth the required size of the smallest infiltration or filtration facility needed for the development's impervious surface area and a site plan demonstrating that an approved infiltration or filtration facility cannot be located on the development site without reducing the size of the proposed development which is otherwise consistent with all other applicable lot and development standards.

**EC 9.6796** is being amended to clarify that facilities treating stormwater runoff from public rights of way and being maintained by the city may require an easement.

**EC 9.6797** is being amended to clarify that unless the applicant proposes private maintenance facilities to treat runoff from the public right of way, the applicant must select, locate, design, and construct an approved public facility type that can be operated and maintained by the city.

**EC 9.8055; 9.8090; 9.8100; 9.8215; 9.8220; 9.8325; 9.8440; 9.8445; 9.8515 and 9.8520** are being amended simply to update the code to the new terminology for “flood control” and “stormwater quality.”

**EC 9.8320** is being deleted because the proposed amendments to EC 9.6790-9.6797 reduce pollutants and mitigate volume, duration, time of concentration, and rate of stormwater runoff which reduces negative impacts on natural drainage ways.

### **Public Notice and Testimony**

The public hearing notice was sent to the City of Springfield, Lane County, all neighborhood organizations, as well as community groups and individuals who have requested notice. In addition, notice was published in the Register Guard.

As of the writing of this report, Bill Kloos, on behalf of the HBA, has submitted written testimony (Attachment B). Mr. Kloos’ written testimony, dated September 20, 2010, was originally submitted to the City by the HBA as comments on the City’s proposed amendments to the Eugene Stormwater Manual. Accordingly, the submitted testimony is not directed at any of the proposed code amendments that are the subject of this public hearing. Nevertheless, Mr. Kloos has requested that the 2010 testimony be included in the record for this 2013 code amendment public hearing and, therefore, the 2010 testimony is included.

Mr. Gordon Anslow, of Anslow and DeGenealt Signature Homes, has submitted written testimony dated May 20<sup>th</sup>, 2013 (Attachment B). The testimony includes a project example, comments on the proposed changes to the code amendments, suggestions for the establishment of stormwater programs, and a general narrative of geology and hydrology of the Willamette River Valley.

### **Code Approval Criteria**

Attached are the findings of consistency with the applicable state land use criteria and related standards as provided at EC 9.8065, and submitted to the Department of Land Conservation and Development (Attachment A: Exhibit A to the Ordinance).

### **Next Steps**

Staff recommends that the Planning Commission hold a public hearing and review the public testimony related to the proposed code amendments. Following the public hearing, the Planning Commission will deliberate on the proposed code amendments and provide a recommendation to the City Council. Planning Commission deliberations are scheduled for June 17, 2013. Following a Planning Commission recommendation, the City Council will hold a public hearing and take action later in 2013.

### **ATTACHMENTS**

- A: Proposed Ordinance and Exhibit A (findings)
- B: Written Testimony

### **FOR MORE INFORMATION**

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONCERNING STORMWATER MANAGEMENT AND AMENDING SECTIONS 9.0500, 9.4780, 9.6790, 9.6791, 9.6792, 9.6796, 9.6797, 9.8030, 9.8055, 9.8090, 9.8100, 9.8215, 9.8220, 9.8320, 9.8325, 9.8440, 9.8445, 9.8515, AND 9.8520 OF THE EUGENE CODE, 1971.**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Section 9.0500 of the Eugene Code, 1971, is amended by revising the definition of “Pollution reduction facility” to provide as follows:

**9.0500**     **Definitions.** As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

~~[Pollution reduction]~~ **Stormwater quality facility.** Any structure or drainage device that is designed, constructed, and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of maintaining or improving surface and/or groundwater quality.

**Section 2.** Subsection (2)(e) of Section 9.4780 of the Eugene Code, 1971, is amended to provide as follows:

**9.4780**     **/WQ Water Quality Overlay Zone - Permitted and Prohibited Uses.** Uses are permitted or prohibited within the /WQ Water Quality Overlay Zone based on whether they occur outside or within the /WQ Management Area as follows:

**(2) Uses Permitted Within /WQ Management Areas.** Subject to any applicable development permits, the following uses are the only uses permitted outright within the /WQ Management Area:

**(e) Construction and Maintenance of Vegetated Stormwater Management Facilities.** Swales, filter strips, constructed wetlands, and other vegetated stormwater management facilities for ~~[pollution reduction]~~ **stormwater quality** or flow control are permitted if otherwise approved through the provisions of EC 9.6791 through 9.6797 in accordance with the Stormwater Management Manual adopted by administrative order of the city manager;

**Section 3.** Subsection (5) of Section 9.6790 of the Eugene Code, 1971, is amended to provide as follows:

**9.6790**     **Stormwater Management Manual.** In order to implement Section 9.6791 through 9.6797 of this code, the City Manager shall adopt in accordance with EC 2.019, City Manager – Administrative and Rulemaking Authority and Procedures, a Stormwater Management Manual. The Stormwater Management Manual may contain forms,

maps and facility agreements and shall include requirements that are consistent with the following goals:

- (5) Reduce pollutants of concern that are generated by identified site uses and site characteristics that are not addressed solely through the ~~[pollution reduction]~~ **stormwater quality** measures by implementing additional specific source control methods including reducing or eliminating pathways that may introduce pollutants into stormwater, capturing acute releases, directing wastewater discharges and areas with the potential for relatively consistent wastewater discharges to the wastewater system, containing spills on site, and avoiding preventable discharges to wastewater facilities, surface waters or ground waters.

**Section 4.** Section 9.6791 of the Eugene Code, 1971, is amended to provide as follows:

**9.6791 Stormwater ~~[Destination]~~ Flood Control.**

- (1) **Purpose.** The purpose of EC 9.6791 is to protect life and property from flood and drainage hazards by maintaining the capacity of the city's stormwater conveyance system through the establishment of ~~[destination]~~ **flood control** regulations for stormwater runoff ~~[from development]~~.
- (2) **Applicability and Exemptions.**
  - (a) **Except as provided in EC 9.6791(2)(b), ~~[Destination]~~ flood control** standards apply to all development **permit applications, privately engineered public improvement permit applications and land use applications.**
  - (b) **The standards in EC 9.6791(3) do not apply to development permit applications where the proposed development will be served by a flood control facility that is a manmade drainage system designed to accommodate stormwater run-off generated by the stormwater basin area.**
- (3) **Standards.**
  - (a) Stormwater ~~[drainage]~~ **flood control** facilities shall be designed and constructed according to adopted plans and policies, and in accordance with standards in EC Chapters 6 and 7, and the stormwater ~~[destination]~~ **flood control** provisions and the facility design requirements set forth in the Stormwater Management Manual. ~~[On-site infiltration is the preferred stormwater destination for development in the River Road-Santa Clara Basin. An applicant proposing a new development must submit documentation to the city showing the stormwater destination into which the proposed development will be disposed.]~~
  - (b) **Based on the Rational Method flow calculation, stormwater runoff from the development site for the flood control design storm shall be:**
    1. **Discharged** ~~[The documentation must establish that the new development will be disposed of]~~ into existing stormwater ~~[drainage]~~ **flood control** facilities that, considering all developments that have received tentative or final plan approval as of the date the ~~[developer]~~ **applicant** submits a complete application, have the capacity to handle the stormwater runoff ~~[that will be generated by the proposed new development for the flood control design storm, or, if the applicant cannot establish that~~

~~existing stormwater drainage facilities have such capacity, the applicant must construct storm drainage facilities to accommodate the stormwater draining from the proposed development]; or~~

2. ***Retained or detained onsite; or***
3. ***Discharged into a new stormwater flood control facility constructed by the applicant.***
- (4) **Underground Injection Control Systems.** Stormwater runoff [disposed of] ***discharged*** in underground systems is also regulated through the federal Underground Injection Control (UIC) program under Part C of the Safe Drinking Water Act (42 U.S.C. § 300, Chapter 6A, Subchapter XII) and Oregon Administrative Rule Chapter 340, Section 044.

**Section 5.** Section 9.6792 of the Eugene Code, 1971, is amended to provide as follows:

**[9.6792 Stormwater Pollution Reduction]**

- ~~(1) Purpose.~~ The purpose of EC 9.6792 is to reduce the impacts that urbanization is having on the city's water quality by providing standards for the capture and treatment of stormwater runoff from development.
- ~~(2) Applicability and Exemptions.~~
  - ~~(a)~~ Except as exempt under EC 9.6792(2)(c), the standards in EC 9.6792(3) apply to all land use applications submitted after July 14, 2006 requesting approval of one or more of the following:
    1. A cluster subdivision tentative plan (EC 9.8055);
    2. A conditional use (EC 9.8090 or 9.8100);
    3. A partition tentative plan (EC 9.8215 or 9.8220);
    4. A planned unit development tentative plan (EC 9.8320 or 9.8325);
    5. Site review (EC 9.8440 or 9.8445);
    6. A subdivision tentative plan (EC 9.8515 or 9.8520).
  - ~~(b)~~ Except as exempt under EC 9.6792(2)(c), the standards in EC 9.6792(3) apply to all applications for development permits submitted after July 14, 2006.
  - ~~(c)~~ The standards in EC 9.6792(3) do not apply to:
    1. A land use application that will result in the construction or creation of less than 1,000 square feet of new or replaced impervious surface at full buildout of the development.
    2. A development permit application for any of the following:
      - a. Development of a lot or parcel included in a land use application that was determined by the city to comply with the standards in EC 9.6792(3). For such a development permit, the approved land use plan shall control.
      - b. Development of a lot or parcel that was not included in a land use application that was determined by the city to comply with the standards in EC 9.6792(3) and:
        - (1) Will result in less than 1,000 square feet of new or replaced impervious surface within a 12 month period; or
        - (2) Is to construct or alter a one or two family dwelling; or
        - (3) The replacement of more than 1,000 square feet of impervious surface for purposes of maintenance or

~~repair for the continuance of the current function, providing that as part of such maintenance and repair the applicant is replacing less than 50% of the length of the stormwater drainage system (including pipes, drainageway catch basins and drywells) on the development site.~~

~~(3) Standards.~~

- ~~(a) Applications shall include pollution reduction facilities selected from the Stormwater Management Manual as follows:
  - ~~1. For land use applications listed in EC 9.6792(2)(a) for undeveloped land, the selected pollution reduction facilities shall treat all the stormwater runoff from the development site that will result from the water quality design storm;~~
  - ~~2. For land use applications listed in EC 9.6792(2)(a) that change or add development to an already developed site, the selected pollution reduction facilities shall treat the stormwater runoff from all added and replaced impervious surface that will result from the water quality design storm;~~
  - ~~3. For development permit applications, the selected pollution reduction facilities shall treat all stormwater runoff from all new or replaced impervious surface, or an equivalent on-site area, that will result from the water quality design storm;~~~~
- ~~(b) All pollution reduction facilities shall be sited, designed and constructed according to the pollution reduction provisions and the facility design requirements set forth in the Stormwater Management Manual. Pollution reduction facilities must be designed using one of the three methodologies outlined in the Stormwater Management Manual.~~
- ~~(c) The standards in EC 9.6792(3) may be adjusted pursuant to EC 9.8030(24).]~~

**9.6792 Stormwater Quality.**

- (1) Purpose. The purpose of EC 9.6792 is to reduce runoff pollution and mitigate the volume, duration, time of concentration and rate of stormwater runoff from development by implementing low impact development and green infrastructure while capturing and treating approximately 80% of the average annual rainfall.**
- (2) Applicability and Exemptions.
  - (a) The standards in EC 9.6792(3)(a) apply to applications submitted after \_\_\_\_\_ requesting approval of a partition tentative plan (EC 9.8215 or 9.8220), a planned unit development tentative plan (EC 9.8320 or 9.8325) or a subdivision tentative plan (EC 9.8515 or 9.8520) if the application does not propose construction of a private street or a shared driveway.**
  - (b) The standards in EC 9.6792(3) apply to applications submitted after \_\_\_\_\_ requesting approval of:
    - 1. A partition tentative plan (EC 9.8215 or 9.8220), a planned unit development tentative plan (EC 9.8320 or 9.8325) or a subdivision tentative plan (EC 9.8515 or 9.8520) if the application proposes construction of a private street or a shared driveway;**
    - 2. Cluster subdivision tentative plan (EC 9.8055), conditional******

- use (EC 9.8090-9.8100), or site review (EC 9.8440).*
- (c) *Except as exempt under EC 9.6792(2)(d), the standards in EC 9.6792(3)(b)-(g) apply to applications for all development permits and privately engineered public improvement permits submitted after \_\_\_\_\_.*
  - (d) *The standards in EC 9.6792(3) do not apply to development permit applications:*
    - 1. *For the construction of less than 1,000 square feet of new or replaced impervious surface within a 12 month period; or*
    - 2. *For interior alterations of an existing structure; or*
    - 3. *For the construction of more than 1,000 square feet of impervious surface that replaces existing impervious surface for purposes of maintenance or repair for the continuance of the current function, providing that as part of such maintenance and repair the applicant is replacing less than 50% of the length of the stormwater drainage system (including pipes, drainageway catch basins and drywells) on the development site.*
  - (e) *If a development permit is sought for a lot or parcel included in a land use application that was determined by the City in 2006 or later to comply with the City's stormwater quality (pollution reduction) standards in place at the time of land use approval, a development permit application that is consistent with the approved land use plan is sufficient to demonstrate compliance with the standards in EC 9.6792(3).*
  - (f) *Notwithstanding EC 9.6792(2)(e), if a development permit is sought for a lot or parcel included in a land use application that was determined by the City in \_\_\_\_\_ or later to comply with EC 9.6792(3)(a), a development permit application must demonstrate compliance with EC 9.6792(3)(b)-(g).*
- (3) *Standards.*
- (a) *The applicant has submitted a site development plan that delineates the following conditions existing on the development site:*
    - 1. *Infiltration rates less than 2 inches per hour;*
    - 2. *Bedrock less than 5 feet below the ground surface;*
    - 3. *Groundwater elevations less than 6 feet; or,*
    - 4. *Ground surface slopes greater than 10%.*
  - (b) *Stormwater quality facilities shall be selected from the Stormwater Management Manual and shall be based on the following priority order: infiltration, filtration, mechanical treatment.*
  - (c) *If using a filtration treatment facility, the applicant has submitted a report that demonstrates at least one of the following development site conditions exist:*
    - 1. *Infiltration rates are less than 2 inches per hour;*
    - 2. *Bedrock is less than 5 feet below the ground surface;*
    - 3. *Groundwater elevations are less than 6 feet; or,*
    - 4. *Ground surface slopes are greater than 10%.*
  - (d) *If using a mechanical treatment facility to treat any of the stormwater runoff, the applicant has submitted a report that demonstrates there is insufficient land area to construct an*

*approved infiltration or filtration facility by setting forth the required size of the smallest infiltration or filtration facility needed for the development's impervious surface area and a site plan demonstrating that an approved infiltration or filtration facility cannot be located on the development site without reducing the size of the proposed development which is otherwise consistent with all other applicable lot and development standards.*

- (e) *The selected stormwater quality facilities shall treat all stormwater runoff from all new or replaced impervious surfaces that will result from the water quality design storm.*
- (f) *All stormwater quality facilities shall be sited, designed and constructed according to the water quality provisions and the facility design requirements set forth in the Stormwater Management Manual.*
- (g) *The standards in EC 9.6792(3) may be adjusted pursuant to EC 9.8030(24).*

**Section 6.** Subsection (3)(e) of Section 9.6796 of the Eugene Code, 1971, is amended to provide as follows:

**9.6796     Dedication of Stormwater Easements.**

- (3) **Standards.** The applicant must dedicate public easements approved by the city over city maintained stormwater management facilities provided the city makes findings to demonstrate consistency with constitutional requirements. The conveyance of ownership or dedication of easements may be required in any of the following circumstances:
  - (e) Where the ***facility will provide treatment solely for runoff from the public right-of-way and the*** City ~~[has accepted functional maintenance responsibility for pollution reduction and/or flow control facilities in accordance with EC 9.6797(4)(b)]~~ ***will be maintaining the facility.***

**Section 7.** Section 9.6797 of the Eugene Code, 1971, is amended to provide as follows:

**9.6797     Stormwater Operation and Maintenance.**

- ~~(1) [Purpose. The purpose of EC 9.6797 is to ensure that stormwater management facilities designed and constructed in accordance with EC 9.6791-9.6796 and the Stormwater Management Manual are operated and maintained in a manner that protects life and property from flood and drainage hazards, protects water quality, and protects the waterways in the headwaters area from the erosive effects of runoff.~~
- ~~(2) Applicability. Operation and maintenance standards apply to all facilities designed and constructed in accordance with EC 9.6792 through EC 9.6795 and the Stormwater Management Manual.~~
- ~~(3) Standards.
  - (a) Unless the city accepts the responsibility to operate and maintain a stormwater facility, all stormwater management facilities shall be privately operated and maintained.~~

~~(b)~~—All stormwater facilities shall be operated and maintained in accordance with EC Chapters 6 and 7, and the Stormwater Management Manual.

**(2) Unless the applicant proposes private maintenance of the facility, a stormwater facility that will provide treatment for runoff from the public right-of-way shall be:**

- (a) Designed and constructed through the Privately Engineered Public Improvement (PEPI) process; and**
- (b) Located in public rights of way or public easements dedicated in accordance with EC 9.6796; and**
- (c) Selected from the list of stormwater facilities identified in the Stormwater Management Manual as a type of facility that the City will operate and maintain.**

~~[(c) Privately maintained facilities. Applications proposing private operation and maintenance of all or part of the stormwater facility shall include an Operations and Maintenance Plan in accordance with the forms adopted as a part of the Stormwater Management Manual.~~

~~(d) Publicly maintained facilities. Applications proposing city operation and maintenance of all or part of the stormwater facility shall include an Operations and Maintenance Agreement in accordance with the facility agreements adopted as a part of the Stormwater Management Manual.~~

**~~(4) City Maintenance.~~**

~~(a) If the conditions of EC 9.6797(4)(b) are satisfied, the city will accept functional maintenance responsibility of the following facilities:~~

- ~~1. A facility designed and constructed to provide treatment solely for runoff from the public right-of-way;~~
- ~~2. A facility designed and constructed to provide treatment solely for runoff from 4 or more one and two family residential properties that are not under common ownership;~~
- ~~3. A facility designed and constructed to provide treatment solely for runoff that is a combination of one and two family residential properties not under common ownership and the public right-of-way.~~

~~(b) The city will accept functional maintenance responsibility of a facility listed in EC 9.6797(4)(a) if all of the following conditions are met:~~

- ~~1. The city has approved the dedication of the easement or public way to the city the property on which the facility is located or the city has approved plans allowing the facility to be placed within the public right-of-way; and~~
- ~~2. The city has approved plans dedicating the drainage system conveying runoff from the residential properties to the stormwater facility as a public drainage system; and~~
- ~~3. The stormwater facility access routes have been located within a dedicated public easement on private or commonly held property, within the public right-of-way or on city owned property; and~~
- ~~4. Sufficient easement area, right-of-way width or property have been provided to accommodate the construction and maintenance of all existing and proposed utilities and public infrastructure; and~~
- ~~5. The facility is designed and constructed in accordance with the city's Stormwater Management Manual; and~~
- ~~6. Access to the proposed facility allows maintenance to be performed using city owned maintenance equipment; and~~

- ~~7. As construct plans of the drainage system shall be submitted designating all facilities that are proposed for public maintenance within 30 days of the city accepting maintenance responsibilities; and~~
- ~~8. The facility is designed and constructed in compliance with the city's Public Improvement Design Standards Manual.~~
- ~~(c) Notwithstanding EC 9.6797(4)(a) and (b), the city will not accept operation and maintenance responsibility of eco-roofs, roof gardens, pervious pavement, contained planters, tree credits, rainwater harvesting or private drywells.~~

~~(5) **Private Operation and Maintenance.** All privately operated and maintained stormwater management facilities shall be operated and maintained in accordance with EC Chapter 6.]~~

**Section 8.** Subsection (24) of Section 9.8030 of the Eugene Code, 1971, is amended to provide as follows:

**9.8030 Adjustment Review - Approval Criteria.** The planning director shall approve, conditionally approve, or deny an adjustment review application. Approval or conditional approval shall be based on compliance with the following applicable criteria.

**(24) Stormwater [Pollution Reduction] Quality, Flow Control, Oil Control and Source Control Standards Adjustment.**

- (a) The requirement in EC 9.6792(3)(a)1 and EC 9.6792(3)(a)3(e) that selected [pollution reduction] **stormwater quality** facilities shall treat all the stormwater runoff that will result from the water quality design storm may be adjusted upon a finding that the [selected pollution reduction] **stormwater quality** facility will treat as much of the runoff as possible and one of the following applies:
  - 1. The area generating untreated runoff is less than 500 square feet of impervious surface and is isolated from the [pollution reduction] **stormwater quality** facility;
  - 2. The area generating untreated runoff is less than 500 square feet of impervious surface and it is not technically feasible to drain the untreated runoff to the [pollution reduction] **stormwater quality** facility;
  - 3. Constructing [pollution reduction] **stormwater quality** facilities to treat the runoff from the area at issue would require removal of trees or damage to other natural resources; or
  - 4. The area generating untreated runoff is less than 500 square feet of impervious surface and limited access to the area would prevent regular maintenance of the [pollution reduction] **stormwater quality** facility.
- (b) The requirement in EC 9.6792(3)(b)(f) that all [pollution reduction] **stormwater quality** facilities be selected from and sited, designed, and constructed according to the [pollution reduction] **stormwater quality** provisions and the facility design requirements set forth in the Stormwater Management Manual and that [pollution reduction] **stormwater quality** facilities must be designed using one of the

methodologies outlined in the Stormwater Management Manual may be adjusted upon finding that all of the following requirements are met:

1. The proposed alternative design will achieve equal, or superior, results for function (reducing pollution), maintainability and safety, and the proposed siting does not adversely affect structures or other properties.
  2. The applicant's written description of the proposed alternative design has been reviewed and approved by the City Engineer. The description of the proposed design submitted for review must include all of the following information for each component of the proposed alternative design:
    - a. Size, technical description, capacity, capital cost, design life, construction process and costs, consequences of improper construction, operation and maintenance requirements and costs;
    - b. Data on the effectiveness of proposed alternative technologies, if available, including data from laboratory testing and pilot/full-scale operations, and information regarding the operations of any full-scale installations;
    - c. Any other available information about the proposed design, including peer review articles, scientific or engineering journals, and approvals from other jurisdictions.
  3. The applicant has submitted a method and schedule for monitoring the effectiveness of the proposed design once constructed, and a schedule for its maintenance.
  4. The applicant has submitted a signed statement that the applicant will replace the alternative ~~[pollution reduction]~~ **stormwater quality** facility if the facility does not function as proposed.
- (c) The requirement in EC 9.6793(3)(a) and EC 9.6793(3)(b) may be adjusted upon a finding that the flow control facility will control flow rates as much as possible and one of the following applies:
1. The area at issue generating runoff is less than 500 square feet of impervious surface and is isolated from the flow control facility;
  2. The area at issue generating runoff is less than 500 square feet of impervious surface and it is not technically feasible to drain the untreated runoff to the flow control facility;
  3. Constructing facilities to control the flow of runoff from the area at issue would require removal of trees or damage to other natural resources;
  4. The area at issue generating runoff is less than 500 square feet of impervious surface and limited access to the area would prevent regular maintenance of the flow control facility.
- (d) The requirements in EC 9.6793(3)(d) that all flow control facilities be selected from and sited, designed, and constructed according to the flow control provisions and the facility design requirements set forth in the Stormwater Management Manual may be adjusted upon finding that all of the following requirements are met:
1. The proposed alternative design will achieve equal, or superior, results for function (maintaining flow or restricting flow or both), maintainability and safety, and the proposed siting does not adversely affect structures or other properties;

2. The applicant's written description of the proposed alternative design has been reviewed and approved by the City Engineer. The description of the proposed design submitted for review must include all of the following information for each component of the proposed alternative design:
    - a. Size, technical description, capacity, capital cost, design life, construction process and costs, consequences of improper construction, operation and maintenance requirements and costs;
    - b. Data on the effectiveness of proposed alternative design, if available, including data from laboratory testing and pilot/full-scale operations, and information regarding the operations of any full-scale installations;
    - c. Any other available information about the proposed design, including peer review articles, scientific or engineering journals, and approvals from other jurisdictions.
  3. The applicant has submitted a method and schedule for monitoring the effectiveness of the proposed design once constructed, and a schedule for its maintenance;
  4. The applicant has submitted a signed statement that the applicant will replace the alternative flow control facility if the facility does not function as proposed.
- (e) The requirement in EC 9.6795(3) that oil control facilities be sited, designed and constructed according to the oil control provisions and the facility design requirements set forth in the Stormwater Management Manual may be adjusted if the applicant can demonstrate that the selected oil control facility will achieve the same result as those listed in the Stormwater Management Manual.
- (f) The requirement in EC 9.6796(3) that source controls be sited, designed and constructed according to source control provisions set forth in the Stormwater Management Manual may be adjusted if the applicant can demonstrate that the selected source control will achieve the same result as those listed in the Stormwater Management Manual. Applicants seeking an adjustment to EC 9.6796(3) must submit a completed authorization request form adopted as part of the Stormwater Management Manual.

**Section 9.** Subsection (1)(d) of Section 9.8055 of the Eugene Code, 1971, is amended to provide as follows:

- 9.8055     Cluster Subdivision- Approval Criteria - General.** The planning director shall approve, approve with conditions, or deny a proposed cluster subdivision. Approval or approval with conditions shall be based on the following:
- (1) The proposed subdivision complies with:
    - (d) EC 9.6791 through 9.6797 regarding stormwater [~~destination, pollution reduction~~]**flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 10.** Subsection (8)(d) of Section 9.8090 of the Eugene Code, 1971, is amended to provide as follows:

- 9.8090     Conditional Use Permit Approval Criteria - General.** A conditional use permit shall be granted only if the proposal conforms to all of the following criteria:
- (8)**     The proposal complies with all applicable standards, including but not limited to:
- (d)     EC 9.6791 through 9.6797 regarding stormwater ~~[destination, pollution reduction]~~ **flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance; and

**Section 11.** Subsection (4)(h) of Section 9.8100 of the Eugene Code, 1971, is amended to provide as follows:

- 9.8100     Conditional Use Permit Approval Criteria- Needed Housing.** The hearings official shall approve, conditionally approve, or deny the conditional use permit application. Unless the applicant elects to use the general criteria contained in EC 9.8090 Conditional Use Permit Approval Criteria - General, where the applicant proposes needed housing, as defined by the State statutes, the hearings official shall approve or approve with conditions a conditional use based on compliance with the following criteria:
- (4)**     The proposal complies with all applicable standards, including, but not limited to:
- (h)     EC 9.6791 through 9.6797 regarding stormwater ~~[destination, pollution reduction]~~ **flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 12.** Subsection (1)(j) of Section 9.8215 of the Eugene Code, 1971, is amended to provide as follows:

- 9.8215     Partition, Tentative Plan Approval Criteria- General.** The planning director shall approve, approve with conditions, or deny a partition, with findings and conclusions. Approval, or approval with conditions, shall be based on compliance with the following criteria:
- (1)**     The proposed partition complies with all of the following:
- (j)     EC 9.6791 through 9.6797 regarding stormwater ~~[destination, pollution reduction]~~ **flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 13.** Subsection (2)(j) of Section 9.8220 of the Eugene Code, 1971, is amended to provide as follows:

- 9.8220     Partition, Tentative Plan Approval Criteria- Needed Housing.** The planning

director shall approve, conditionally approve, or deny the partition application. Unless the applicant elects to use the general criteria contained in EC 9.8215 Partition, Tentative Plan Approval Criteria- General, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a partition based on compliance with the following criteria:

- (2) The proposed partition complies with all of the following:
  - (j) EC 9.6791 through 9.6797 regarding stormwater [~~destination, pollution reduction~~]**flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 14.** Subsections (5)(a), (10) and (11)(j) of Section 9.8320 the Eugene Code, 1971, are amended; and subsection (9) of that Section is repealed to provide as follows.

Subsections (10) through (16) of that Section are renumbered to (9) through (15).

**9.8320 Tentative Planned Unit Development Approval Criteria- General.** The hearings official shall approve, approve with conditions, or deny a tentative PUD application with findings and conclusions. Decisions approving an application, or approving with conditions shall be based on compliance with the following criteria:

- (5) The PUD provides safe and adequate transportation systems through compliance with the following:
  - (a) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways (not subject to modifications set forth in subsection [(11)](10) below).
- ~~[(9) Stormwater runoff from the PUD will not create significant negative impacts on natural drainage courses either on-site or downstream, including, but not limited to, erosion, scouring, turbidity, or transport of sediment due to increased peak flows or velocity.]~~
- ~~(109)~~ Lots proposed for development with one-family detached dwellings shall comply with EC 9.2790 Solar Lot Standards or as modified according to subsection [(11)](10) below.
- ~~(1110)~~ The PUD complies with all of the following:
  - (j) EC 9.6791 through 9.6797 regarding stormwater [~~destination, pollution reduction~~]**flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 15.** Subsection (7)(j) of Section 9.8325 of the Eugene Code, 1971, is amended to provide as follows:

**9.8325 Tentative Planned Unit Development Approval Criteria - Needed Housing.** The hearings official shall approve, conditionally approve, or deny the PUD application with findings and conclusions. Unless the applicant elects to use the general criteria contained in EC 9.8320 Tentative Planned Unit Development Approval Criteria - General, where the applicant proposes needed housing, as defined by the State statutes, the hearings official shall approve or approve with conditions a PUD based on compliance with the following criteria:

- (7) The PUD complies with all of the following:
- (j) EC 9.6791 through 9.6797 regarding stormwater [~~destination, pollution reduction~~]**flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 16.** Subsection (5)(j) of Section 9.8440 of the Eugene Code, 1971, is amended to provide as follows:

- 9.8440 Site Review Approval Criteria-General.** The planning director shall approve, conditionally approve, or deny the site review application. Approval or conditional approval shall be based on compliance with the following criteria:
- (5) The proposal complies with all of the following standards:
- (j) EC 9.6791 through 9.6797 regarding stormwater [~~destination, pollution reduction~~]**flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 17.** Subsection (4)(j) of Section 9.8445 of the Eugene Code, 1971, is amended to provide as follows:

- 9.8445 Site Review Approval Criteria- Needed Housing.** The planning director shall approve, conditionally approve, or deny the site review application. Unless the applicant elects to use the general criteria contained in EC 9.8440 Site Review Approval Criteria - General, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a site review based on compliance with the following criteria:
- (4) The proposal complies with all of the following standards:
- (j) EC 9.6791 through 9.6797 regarding stormwater [~~destination, pollution reduction~~]**flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 18.** Subsection (10)(h) of Section 9.8515 of the Eugene Code, 1971, is amended to provide as follows:

- 9.8515 Subdivision, Tentative Plan Approval Criteria - General.** The planning director shall approve, approve with conditions, or deny a proposed subdivision. Approval, or approval with conditions shall be based on compliance with the following criteria:
- (10) The proposed subdivision complies with all of the following:
- (h) EC 9.6791 through 9.6797 regarding stormwater [~~destination, pollution reduction~~]**flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 19.** Subsection (3)(k) of Section 9.8520 of the Eugene Code, 1971, is amended to provide as follows:

**9.8520 Subdivision, Tentative Plan Approval Criteria- Needed Housing.** The planning director shall approve, conditionally approve, or deny the subdivision application. Unless the applicant elects to use the general criteria contained in EC 9.8515 Subdivision, Tentative Plan Approval Criteria- General, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a subdivision based on compliance with the following criteria:

- (3) The proposed subdivision complies with all of the following:
- (k) EC 9.6791 through 9.6797 regarding stormwater ~~[destination, pollution reduction]~~ **flood control, quality**, flow control for headwaters area, oil control, source control, easements, and operation and maintenance.

**Section 20.** The findings set forth in Exhibit A attached to this Ordinance are adopted as findings in support of this Ordinance.

**Section 21.** The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

**Section 22.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**Passed by the City Council this**

\_\_\_\_ day of \_\_\_\_\_, 2013

**Approved by the Mayor this**

\_\_\_\_ day of \_\_\_\_\_, 2013

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**City Recorder**

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**Mayor**

Exhibit A to Ordinance No. \_\_\_\_\_

**Adoption of Code Amendments:** Eugene Code Section 9.8065 requires that the following criteria be applied to a code amendment:

- (1) *The amendments are consistent with applicable statewide planning goals adopted by the Land Conservation and Development Commission.*

*Goal 1 - Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The City has acknowledged provisions for citizen involvement that insure the opportunity for citizens to be involved in all phases of the planning process and encourage such involvement. The action taken did not amend the citizen involvement program.

Staff notified interested parties, the Lane County Homebuilders, Eugene's Neighborhood Leaders Council, Long Tom Watershed Council, and the Eugene Chamber of Commerce of the proposed stormwater management code amendments and offered to meet with them individually to clarify the proposal and answer questions. To date, no one has asked for additional information.

In an effort to ensure the information and status would be available, staff established a website that holds the proposed amendments, time schedule, and instructions on how to become involved.

The City of Eugene land use code implements Statewide Planning Goal 1 by requiring that notice of the proposed amendments be given and public hearings be held prior to adoption. Consideration of this ordinance will begin with a Eugene Planning Commission works session held on March 25, 2013. On May 7, 2013, a public hearing will be held before the Eugene Planning Commission on the proposed amendments. Department of Land Conservation and Development notice, notice to interested parties and newspaper publication will be provided for that hearing.

The process for adopting the amendments complies with Goal 1 since it is consistent with, and will not change, the City's existing and acknowledged citizen involvement provisions.

*Goal 2 - Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

The Eugene Land Use Code specifies the procedure and criteria that are used in considering these amendments to the code. The record shows that there is an adequate factual base for the amendments.

Goal 2 requires that plans be coordinated with the plans of affected governmental units and that opportunities be provided for review and comment by affected governmental units. The Goal 2

coordination requirement is met when the City engages in an exchange, or invites such an exchange, between the City and any affected governmental unit and when the City uses the information obtained in the exchange to balance the needs of the citizens. These amendments do not affect any other governmental units.

There are no Goal 2 exceptions required for these amendments. Therefore, the amendments are consistent with Goal 2.

*Goal 3 - Agricultural Lands. To Preserve Agricultural Lands.*

The amendments are for property located within the urban growth boundary and do not affect any land designated for agricultural use. Therefore, Goal 3 does not apply.

*Goal 4 - Forest Lands. To conserve forest lands.*

The amendments are for property located within the urban growth boundary and do not affect any land designated for forest use. Therefore, Goal 4 does not apply.

*Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources. To conserve open space and protect natural and scenic resources.*

OAR 660-023-0250(3) provides:

*Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:*

- (a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;*
- (b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or*
- (c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.*

The amendments do not create or amend the City's list of Goal 5 resources, do not amend a code provision adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5, do not allow new uses that could be conflicting uses with a significant Goal 5 resource site and do not amend the acknowledged UGB. Therefore, Statewide Planning Goal 5 does not apply.

*Goal 6 - Air, Water and land Resource Quality. To maintain and improve the quality of the air, water and land resources of the state.*

Goal 6 addresses waste and process discharges from development and is aimed at protecting air, water and land from impacts from those discharges. This goal requires that local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.

The proposed amendments to Eugene's Stormwater Development Standards are one component of the larger Stormwater Program initiated by the Department of Environmental Quality (DEQ)'s approval of the City's National Pollutant Discharge Elimination System (NPDES) permit. The City's NPDES Stormwater permit, first issued in 1994 by DEQ, and subsequently re-issued in March 2004 and December 2010, includes measures which, in total, fulfill the applicable Clean Water Act requirements for large municipalities over 100,000 in population.

The City's December 2010 NPDES Stormwater permit requires that the City continue to implement their post-construction stormwater pollutant and runoff control program. Additionally, the 2010 permit requires that, by January 1, 2014, the City's program as it applies to new development and redevelopment projects that create or replace 1000 sq. ft. of impervious surface: 1. Incorporate site-specific management practices to mimic natural surface or predevelopment hydrologic functions as much as practicable, optimizing on-site retention; 2. Reduce site specific post-development stormwater runoff volume, duration and rates of discharges to the municipal separate storm sewer system to minimize hydrological and water quality impacts from impervious surfaces; 3. Prioritize and include implementation of Low-Impact Development, Green Infrastructure or equivalent planning, design and construction approaches; and, 4. Capture and treat 80% of the annual average runoff volume, based on a documented local or regional rainfall frequency and intensity.

Current stormwater development standards require locating, designing, constructing, and maintaining stormwater facilities applicable to the development of new and replaced impervious surfaces to reduce pollutants before discharging runoff from the development site to the city's stormwater system and that all stormwater runoff from impervious surfaces be discharged to an approved location. The proposed amendments will further reduce pollutants and mitigate the volume, duration, time of concentration and rate of stormwater runoff to the city stormwater system.

More specifically, the proposed amendments for stormwater management will implement a best management practices (BMP) hierarchy of on-site stormwater management techniques that emphasize and promote Low Impact Development and Green Infrastructure approaches which improve water quality and increase capacity in the city's stormwater system. Low Impact Development and Green Infrastructure approaches emphasize practices that seek to mimic the site's hydrology before development, thereby reducing negative effects of stormwater runoff on nearby rivers, lakes, streams and wetlands.

For the reasons stated above, the amendments are consistent with Goal 6.

*Goal 7 - Areas Subject to Natural Disasters and Hazards. To protect life and property from natural disasters and hazards.*

Goal 7 requires that local government planning programs include provisions to protect people and property from natural hazards such as floods, landslides, earthquakes and related hazards, tsunamis and wildfires. The Goal prohibits a development in natural hazard areas without appropriate safeguards. The amendments do not effect the City's restrictions on development in areas subject to natural disasters and hazards. Further, the amendments do not allow for new development that could result in a natural hazard. Therefore, Goal 7 does not apply.

*Goal 8 - Recreational Needs. To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.*

Goal 8 ensures the provision of recreational facilities to Oregon citizens and is primarily concerned with the provision of those facilities in non-urban areas of the state. The amendments do not affect the City's provisions for recreation areas, facilities or recreational opportunities. Therefore, Goal 8 does not apply.

*Goal 9 - Economic Development. To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The Administrative Rule for Statewide Planning Goal 9 (OAR 660, Division 9) requires cities to evaluate the supply and demand of commercial land relative to community economic objectives. The City's Industrial Lands Inventory is acknowledged for compliance with the requirements of Goal 9 and its Administrative Rule.

The amendments do not impact the supply of industrial or commercial lands. Therefore, the amendments are consistent with Goal 9.

The stormwater development standards do not render any property unusable for commercial or industrial uses. The amendments prioritize the selection of stormwater quality facilities in the following order: infiltration, filtration, mechanical treatment. Applicants that do not have sufficient land to install infiltration or filtration facilities can utilize mechanical treatment facilities. Mechanical treatment facilities are a current stormwater treatment option and do not restrict any buildable land area. An applicant demonstrates insufficient land area by submitting a report setting forth the required size of the smallest infiltration or filtration facility needed for the development's impervious surface area and a site plan demonstrating that an approved infiltration or filtration facility cannot be located on the development site without reducing the size of the proposed development which is otherwise consistent with all other applicable lot and development standards.

Considering this provision in the stormwater development standards, the application of these

amendments to a property zoned and designated for commercial or industrial use will not result in a diminution in the area's supply of commercial or industrial land. Additionally, the code provisions allowing an applicant to adjust some of the standards are not being amended. Therefore, these amendments are consistent with Goal 9.

*Goal 10 - Housing. To provide for the housing needs of citizens of the state.*

The amendments do not impact the supply of residential lands. Therefore, the amendments are consistent with Goal 10. The stormwater development standards do not render any property unusable for residential uses. As noted above, while the amendments prioritize infiltration and filtration stormwater quality facilities over mechanical facilities, applicants demonstrating insufficient land area for use of the infiltration and filtration options can utilize mechanical treatment which is a current stormwater treatment option. An applicant demonstrates insufficient land area by submitting a report setting forth the required size of the smallest infiltration or filtration facility needed for the development's impervious surface area and a site plan demonstrating that an approved infiltration or filtration facility cannot be located on the development site without reducing the size of the proposed development which is otherwise consistent with all other applicable lot and development standards.

Considering this provision in the stormwater development standards, the application of these regulations to a property zoned and designated for residential use will not result in a diminution in the area's supply of residential land. Therefore, these amendments are consistent with Goal 10.

*Goal 11- Public Facilities and Services. To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

The Eugene-Springfield metropolitan area has an acknowledged Public Facilities and Services Plan (PFSP). The PFSP describes the public stormwater facilities necessary to support that land uses designated in the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) within the urban growth boundary. These amendments are consistent with the adopted Eugene-Springfield Metro Area PFSP. Further, these amendments do not effect the City's provision of any public facilities and services, including stormwater facilities and services. Therefore, Goal 11 does not apply.

*Goal 12- Transportation. To provide and encourage a safe, convenient and economic transportation system.*

Goal 12 is implemented through the Transportation Planning Rule (TPR). The Eugene-Springfield Metropolitan Area Transportation Plan (TransPlan) provides the regional policy framework through which the TPR is enacted at the local level.

The Transportation Planning Rule (OAR 660-012-0060) states that land use changes that significantly affect a transportation facility shall require mitigation measures to address the anticipated impacts. The rule states that:

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

Adoption of these amendments will not change the functional classification of an existing or planned transportation facility. Nor will it change standards implementing a functional classification system. Further, it will not allow types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility or reduce the performance standards of any facility. Therefore, Goal 12 is not implicated by these amendments.

Goal 13 - Energy Conservation. *To conserve energy.*

The amendments do not impact energy conservation. Therefore, Goal 13 does not apply.

Goal 14 - Urbanization. *To provide for an orderly and efficient transition from rural to urban land use.*

The amendments do not affect the City's provisions regarding the transition of land from rural to urban uses. Therefore, Goal 14 does not apply.

Goal 15 - Willamette River Greenway. *To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.*

The Willamette River Greenway area within the Eugene Urban Growth Boundary is governed by existing local provisions which have been acknowledged as complying with Goal 15. Those provisions are unchanged by these amendments. Therefore, Goal 15 does not apply.

Goals 16 - 19. *Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean resources.*

These Statewide Planning Goals do not apply to the actions taken.

***(2) The amendments are consistent with applicable provisions of the Metro Plan and applicable adopted refinement plans.***

The proposed code amendments add regulations to the Land Use Code with the intent of protecting life and property from flood and drainage hazards, reducing the impacts that urbanization is having on the City's water quality, and protecting waterways from erosive affects of increases in stormwater runoff. Additionally, the proposed code amendments refine the City's current stormwater management code provisions in an effort to further reduce pollutant loading to receiving waters from developed areas. The proposed amendments require development applicants to select stormwater quality facilities from the Stormwater Management Manual based on the following priority order: infiltration, filtration, mechanical treatment. Each of these priorities is described below:

**1. Infiltration:** On-site infiltration facilities (*i.e.* stormwater planters and rain gardens) reduce pollutants and mitigate the volume, duration, and time of concentration and rate of stormwater runoff.

**2. Filtration:** On-site filtration facilities (*i.e.* stormwater planters, rain gardens, vegetative and grassy swales, and filter strips) reduce pollutants and mitigate a portion of the volume, duration, and time of concentration and rate of stormwater runoff.

**3. Mechanical Treatment:** On-site manufactured treatment is currently allowed under the code, does not integrate green infrastructure and has a greater impact on the City's existing stormwater facilities, thus, an applicant that uses a mechanical treatment will forego any discounts on their stormwater system development charges.

Prioritizing the available stormwater quality facilities in a hierarchical order in which infiltration and filtration are prioritized above mechanical treatment, while still allowing mechanical treatment when site conditions or the desired development of the site renders infiltration and filtration facilities impractical will: (1) facilitate (and encourages) a development's incorporation of site-specific management practices that mimic natural surface or predevelopment hydrological functions as much as practicable, optimizing on-site retention based on site conditions; (2) result in reduced site specific post-development stormwater runoff, volume, duration and rates of discharge to the municipal separate storm sewer system (MS4), thereby minimizing hydrological and water quality impacts from impervious surface; (3) encourage and facilitate the applicable and practical uses of low-impact-development or green infrastructure, while allowing other stormwater quality management techniques then use of these approaches is impractical; (4) further the intent to capture and treat 80% of the annual average runoff volume; and, (5) encourage design and implementation techniques intended to minimize impervious surfaces and reduces stormwater runoff.

- Metro Plan Policies - The above-described stormwater development standards are consistent with the following Metro Plan Policies:

#### **Environmental Resources Element:**

*18. Local governments shall develop plans and programs which carefully manage development on hillsides and in water bodies, and restrict development in wetlands in order to protect the scenic quality, surface water and groundwater quality, forest values, vegetation, and wildlife values of those areas.*

*21. Local government shall continue to monitor, to plan for, and to enforce applicable air and water quality standards and shall cooperate in meeting applicable federal, state, and local air and water quality standards.*

*25. Eugene shall maintain and improve and Springfield shall adopt hillside development regulations.*

#### **Public Facilities and Services Element - Services to Development Within the Urban Growth Boundary: Stormwater**

*G.13 Improve surface and ground water quality and quantity in the metropolitan area by developing regulations or instituting programs for stormwater to:*

- a. Increase public awareness of techniques and practices private individuals can employ to help correct water quality and quantity problems;*
- b. Improve management of industrial and commercial operations to reduce negative water quality and quantity impacts;*
- c. Regulate site planning for new development and construction to better manage pre- and post-construction storm runoff, including erosion, velocity, pollutant loading, and drainage;*
- d. Increase storage and retention and natural infiltration of storm runoff to lower and delay peak storm flows and to settle out pollutants prior to discharge into regulated waterways;*
- e. Require on-site contracts and development standards, as practical, to reduce off-site*

*impacts from stormwater runoff;*

*f. Use natural and simple mechanical treatment systems to provide treatment for potentially contaminated runoff waters;*

*g. Reduce street-related water quality and quantity problems;*

*h. Regulate use and require containment and/or pretreatment of toxic substances;*

*i. Include containment measures in site review standards to minimize the effects of chemical and petroleum spills; and*

*j. Consider impacts to ground water quality in the design and location of dry well.*

*G.14 Implement changes to stormwater facilities and management practices to reduce the presence of pollutants regulated under the Clean Water Act and to address the requirements of the Endangered Species Act.*

*G.15 Consider wellhead protection areas and surface water supplies when planning stormwater facilities.*

*G.16 Manage or enhance waterways and open stormwater systems to reduce water quality impacts from runoff to improve stormwater conveyance.*

*G.17 Include measures in local land development regulations that minimize the amount of impervious surface in new development in a manner that reduces stormwater pollution, reduces the negative affects from increases in runoff, and is compatible with Metro Plan policies.*

- Refinement Plan Policies – The above-described stormwater development standards are consistent with following refinement plan policies:

**Comprehensive Stormwater Management Plan Policies:**

*1.1 Incorporate the beneficial functions (flood control, stormwater conveyance, water quality treatment) of natural resources into the city's storm drainage system.*

*1.2 Maintain flood control, drainage, and water quality treatment capacities along the city's stormwater conveyance corridors while protecting and enhancing the health, diversity and continuity for wildlife habitat, native vegetation, and endangered species.*

*1.6 Balance the operational needs of managing natural resource and wildlife habitat areas against any associated nuisance conditions that may result.*

*1.8 Evaluate the effectiveness and appropriateness of a variety of surface water management facilities for meeting the multiple objectives of this plan.*

*2.1 Meet or exceed federal flood hazard requirements.*

- 2.2 *Protect adjoining land uses from flood and drainage hazards.*
- 2.3 *Maximize the capacity of existing stormwater facilities especially where deficiencies exist by encouraging the use of techniques that lower and slow the rate of stormwater runoff.*
- 3.1 *Meet or exceed federal and state stormwater quality requirements especially where they conform with existing local policy.*
- 3.3 *Reduce stormwater pollution associated with new construction and development, soil erosion, improper use of stormwater facilities, and city operations and maintenance practices.*
- 3.4 *Evaluate the effectiveness of stormwater quality management measures.*
- 4.1 *Maintain the stormwater system through techniques and practices that balance flood control, drainage services, water quality, and natural resource protection needs.*

**Willakenzie Area Plan Policies, Public Facilities and Services Element – Natural Drainage:**

- 1 *Encourage development practices that reduce the need for construction of an extensive subsurface storm sewer system.*
- 2. *Encourage growth and development patterns that are compatible with natural features and discourage the alteration of natural features. Relocation of natural drainage features may be considered as an alternative to replacement with a closed pipe system.*
- 3. *Encourage measures that will improve the quality the storm-water runoff discharge into local waterways.*
- (3) ***The amendment is consistent with EC 9.3020 Criteria for Establishment of an S Special Area Zone, in the case of establishment of a special area zone.***

The proposed amendments do not establish a special area zone. Therefore, this criterion does not apply to these amendments.

September 30, 2010

Eugene Public Works  
Eugene PIC  
Atrium Building  
99 West 10th Ave.  
Eugene, OR 97401

Re: HBA Comments on Proposed Amendments to the Eugene Stormwater Manual

Dear City of Eugene:

Please accept these comments on the "PROPOSED AMENDMENTS TO PORTIONS OF THE STORMWATER MANAGEMENT MANUAL ADOPTED BY ADMINISTRATIVE ORDER NO. 58-08-03-F," which is to be heard at a public hearing today. These comments are submitted on behalf of the Home Builders Association of Lane County (HBA).

On behalf of my client, I request written notice of the final adoption of any amendment to administrative rule, pursuant to ORS 197.615(2).

The HBA appreciates staff's openness, during the past year, about sharing and looking for feedback on the earliest drafts of these amendments.

**I. Summary and Overview:**

(a) These amendments are substantial. In part, they implement the following language added to the Eugene Code, EC 9.6790(6), in 2008:

**Stormwater Management Manual.** In order to implement Section 9.6791 through 9.6797 of this code, the City Manager shall adopt in accordance with EC 2.019, City Manager – Administrative and Rulemaking Authority and Procedures, a Stormwater Management Manual.

\* \* \* \*

- (6) Except as otherwise allowed by this land use code, allow disturbances or development within drainage ways only when all of the following conditions exist:
  - (a) The disturbance or development will not impede or reduce flows within the drainage way;
  - (b) The disturbance or development will not increase erosion downstream;

and

(c) The constructed pipe system is sized to convey all of the runoff from the upstream watershed when the upstream watershed is completely developed.

(b) As an amendment to land use regulations, ORS 227.186(2) requires these changes to be adopted by ordinance. This matter should be bumped to the city council for final action and, perhaps, some remedial work on the code language being implemented here, so that the regulations could be more workable.

(c) With these regulations the city is effectively adopting an overlay zone for stormwater. Land can only be developed if an owner can prove that the stormwater system can handle her increment of runoff, and that of everything else in the watershed. Stormwater facilities become an absolute constraint on development potential; stormwater policy and facilities are the independent variable; development allowed under land use plan designations are the dependant variable. Although these regulations are drafted as performance standards, they could just as easily be displayed as maps showing the following colors:

Map Color A: Those “stormwater challenged” watersheds in the UGB that will not have adequate public piping in place during the 20-year planning period to accommodate all stormwater during the design storm for all land developed with uses allowed by the plan designations. These are the watersheds (acreage) where stormwater infrastructure is potentially a constraint on development potential and, therefore, buildable land inventories.

Map Color B (a cross-hatch symbol on Color A): Areas in the stormwater challenged watersheds where soil limitations and high groundwater levels likely preclude developers from meeting DEQ standards for injecting stormwater into the ground on-site. As a real world example, see discussion of *Weiskind* subdivision denial in the River Road area in paragraph 10 below. Developers in these areas are dependent on pipes. But they are in trouble, because the map shows the pipes will not be adequate during the planning period. Developers in the color B area will be racing to use the existing pipe capacity. Some will be left vacant when the pipes are full.

Land use planners in Public Works can calculate the debit to the buildable land inventories due to limited stormwater capacity during the planning period. This calculation will focus on the Color A watersheds, and calculate the underdevelopment that will result from shortage of stormwater capacity. This is the difference between stormwater generation at buildout under the Metro Plan and the planned capacity to convey stormwater out of the watershed.

(d) The city needs to prove up on buildable land inventories for Goal 9 and Goal 10 under these regulations.

(e) The city needs to amend these regulations to include only clear and objective standards, if the city intends to apply these regulations to applications for development of needed housing. This is a requirement of the Needed Housing Statute, Goal 10, and the Goal 10 Rule. As a short cut, the city could add the following caveat to the Manual:

“Notwithstanding any other provisions of this manual, development applications for needed housing on land in the 20-year buildable land inventory shall be reviewed under standards, conditions, and procedures that are clear and objective, and that do not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. Standards that are not clear and objective shall not be applied unless and applicant affirmatively elects processing under such standards.”

(f) The Manual needs to be more disclosing about what data are to be used to do the calculations and analysis required by the Manual. For example: design storms, bases for analysis about runoff from future development, and the like.

## **II. Detailed Comments:**

1. The draft explains that the Manual implements EC 9.6790-9.6797. A copy of those code provisions is attached as Exhibit A.

2. As a general point, the copy of the existing Manual that is in the link in the notice of the hearing on these rules is not the same version of the Manual that is shown in mark-up form in the notice. For example, see the marked up language for “OFF-SITE DISCHARGE TO OPEN FLOW OFF-SITE at page 1-17 of the mark-up. The language being amended does not match with the language in the existing Manual links included in the notice. This likely has lead to some confusion by folks trying to track the changes.

3. “Drainage Way” definition has been stricken. This is positive because the current definition is very broad and fuzzy. It is being replaced with “Open Drainage Way,” which is discussed below.

4. “Open Drainage Way” definition is new. “A natural, open channel that serves as a collection and conveyance system for surface stormwater runoff.” This definition is an improvement over “Drainage Way” because it is easier to understand and locate on the ground. However, it includes terms that need to be defined in the rule, or they will become the subject of disputes in land use applications. “Channel” is not defined in the zoning code or in the Manual. Neither is the term “natural.” The following related definitions appear in the zoning code:

**Natural Drainageways.** Natural rivers, streams, channels, creeks, or other areas that naturally convey stormwater runoff or portions thereof that have not been channelized,

and which retain a predominantly natural character.

**Open Waterway.** A natural or human-made swale, creek, stream, open channel, ditch or other similar water feature, that has a defined and identifiable channel with slopes, that is predominantly of earthen material, and that has the specific function of conveying and/or storing stormwater runoff.

The city should define “channel” in the Manual, since it is not defined in the code. Otherwise we will be arguing about it in the context of applications.

The city should define “natural” in the manual. How much historic human tampering with some part of a channel is enough to take it out of the “natural” category? The code has some references to terms like “predominantly natural,” but that is not much help. Does the channel have to be natural only in the reach of the development site, or for its whole length? Is “natural” a function of vegetation or bank improvements or alignment?

5. New language in 1.6.3 relating to “Discharge to Open Flow off-site” references Appendix E of the URS Stormwater Basin Master Plans as containing “Hydrologic/Hydraulic Model Input and Output Tables. If these URS Plans are going to be relied upon as regulations or refinement plans, they need to be acknowledged as such. They are not. To be acknowledged, the URS Plans would need to be adopted by ordinance and be demonstrated to comply with the Statewide Planning Goals, the Metro Plan, and the city’s other implementing regulations. For example, do the URS Plans’ assumptions about runoff from future development in watersheds reflect the amount of impervious surface that is allowed to be developed in the zoning that implements land use plan designations? If our new stormwater regulations are tied to URS Plans for stormwater management, but those plans are not based on current land use regulations, then the city will be regulating stormwater in a way that is not synched to future development. We would note that Administrative Order No. 58-03-06 (April 14, 2003), expressly states that the URS Basin Plans are not to be used as a basis for decision making. A copy of the Administrative Order is attached as Exhibit B. See Administrative Order 58-03-06, 1 (“However, the Basin Plans will not be used in a manner that regulates conduct or activities of the public.”) The Eugene Hearing Official has noted, too, based on the Administrative Order, that the URS Basin Plans are not standards for decision making. See attached decision, Exhibit C: Nottingham, ST 06-20, SR 06-12, SDR 06-3, at page 8 (Oct. 10, 2007), remanded by LUBA on other grounds (“In fact, the administrative order that endorses the study clearly provides that the conclusions and policies included in the study are *not* to be applied to individual development proposals.) The Manual is an acknowledged land use regulation. It can’t be based or incorporate by reference as standards any documents that are not land use regulations. That is kind of like building a structure on a foundation of jello.

6. New language in 1.6.3 relating to “Discharge to Open Flow off-site” requires an applicant to prove that the “off-site conveyance facility” has capacity to carry post-construction runoff from the site, including from all contributing upstream drainage areas in the Flood Control

Design Storm. The phrase “off-site conveyance facility” is not defined anywhere. It is not explained how far downstream conveyance must be proven. City limits? UGB? County Line? Salem? Astoria?

7. New language in 1.6.3 relating to “Discharge to Piped Flow Off-Site” requires an applicant to prove that the “off-site conveyance facility” has capacity to carry post-construction runoff from the site, including from all contributing upstream drainage areas in the Flood Control Design Storm, in the off-site piped conveyance facilities. The same issues apply to the piped system as do to the “open flow” system described in the two paragraphs above.

8. The Manual changes described in the three paragraphs above make capacity of the “off-site conveyance facilities” a constraint on what land can be developed. If the off-site facilities can’t handle the increment of runoff from a proposed development, then the land can’t be developed. If the city wishes to include vacant or redevelopable land in the 20-year buildable land inventory, then the city needs to demonstrate, in the pending legislative process, that stormwater facilities can be provided during the 20-year period to service the land and make it developable. At this juncture, the city should be able to describe quantitatively what is the remaining development capacity in each watershed and compare that to the amount of development that is anticipated by the plan and zone designations. Making development approval contingent upon the “off-site conveyance facilities” amounts to adopting a stormwater overlay zone, which is a constraint on development potential that is no different from a Goal 5 protection, a density limitation, or a boutique neighborhood height overlay adopted at the request of a favored neighborhood organization with a protectionist agenda.

9. A new subsection has been added in 1.6.4: “Discharge to an off-site facility with insufficient capacity downstream.” This states the development cap in clear terms. “If the stormwater analysis demonstrates that the downstream system has insufficient capacity to carry the post-development runoff from development site, additional stormwater runoff from the site will not be allowed to discharge to the system.” This standard is the crankshaft of the new stormwater overlay zone. The city needs to transform this performance standard into a map that shows what areas do not have remaining capacity for development that generates runoff. In these areas on-site detention or on-site retention will be needed in connection with any development or redevelopment proposal. Such facilities will debit the amount of development that can be done a site; this affects the developable land inventory, just like open space requirements.

10. Renumbered section 1.6.4 is “Underground Injection Control Structures (UICs).” This section reminds us that the DEQ regulates the injection of water below the ground. “Stormwater systems such as sumps, drywells, and soakage trenches are examples of UICs subject to DEQ regulations.” There are examples in Eugene where residential development applications have been denied because no stormwater piped facilities were available off-site, and dry-wells were not an option under the DEQ rules due to high groundwater. Examples include: See, e.g., *Weiskind v. City of Eugene*, 52 Or LUBA 753, 758 (2006). In situations such as this, the property can’t be developed unless the city provides piped conveyance to the site during the

20-year planning period. Areas that have the high groundwater (and likely can't meet the DEQ standards) and are not slated for piped infrastructure during the 20-year planning period, need to be removed from the buildable land inventory, as they can't practically be developed or redeveloped— the increment of stormwater from development can't be piped, and it can't be injected.

11. Renumbered section 1.10.2 is now titled: "Disturbances or Development within Open Drainage Ways." It is substantially modified with new language to implement the new code standards for stormwater in EC 9.6790(6), quoted above. As noted above, there are ambiguous terms in the proposed definition of "open drainage way" that need to be further defined in order to avoid arguments at the project level. The new regulations for any "disturbances or development" in an "open drainage way" lists four new standards, which are discussed below.

12. 1.10.2(1) says: "The stormwater exiting the development site will continue to flow in its original, natural direction." It is not clear what this means, or what this language is trying to achieve. Does it only mean that the water exiting the site still has to flow downhill? Does it mean the water has to exit the development site post-development at the same spot it exited the site pre-development? Something else? As this language stands, it could pose a real head scratcher to someone planning development of a site.

13. 1.10.2(2) says: "The quantity of stormwater exiting the development site is not reduced." This language prevents doing any development in an open drainage way that might be part of a project to detain or retain stormwater so as to regulate flow, increase infiltration, create habitat, or otherwise do work that promotes stormwater management objectives. This language appears to implement the new mandate in EC 9.6790(6)(a), quoted above, which prohibits impeding or reducing flows in a drainage way. This may be competent new language to implement ill-thought out code language. If the City Manager gives these proposed changes to the City Council for adoption by ordinance, as required by statute (see discussion below), then the City Council can struggle with the wisdom of the language they adopted.

14. 1.10.2(3) says: "The velocity and turbidity of the stormwater flow exiting the development site is not increased." This standard appears to implement the new mandate in EC 9.6790(6)(b) above, which prohibits disturbances that will "increase erosion downstream." Is this standard tied to a particular design storm? The velocity of water exiting the site during the design storm may be maintained via control structures located out of the open drainage way. However, there will be an increase in the post-development volume of stormwater absent on-site retention. For that increment of volume, how would a developer prove she has met the no increase in turbidity standard? This invites opposition at the project level and litigation of local decisions. Isn't there a more workable standard to get at the no increase in downstream erosion standard in the code? Wouldn't holding the peak discharge rate for the design storm to the pre-development level be a workable proxy? As drafted, this standard may pose an absolute bar to any development, of the kind previously identified by LUBA as contrary to state law. See *Home*

*Builders Association v. City of Eugene*, 41 Or LUBA 370, 425-26 (2002)(a clear and objective standard that is virtually impossible to meet is a prohibition in the guise of a standard).

15. 1.10.2(4) says: "Any constructed pipe system is sized to convey all the runoff from the upstream watershed when the upstream watershed is completely developed." This standard implements the new mandate in EC 9.6790(6)(c) above. It tracks the language from the code verbatim. A couple of issues are present.

First, is this language limited to the pipe system that is constructed only on the development site? If so, that should be made explicit.

Second, sizing the pipe to accommodate upstream runoff from future development in the watershed requires making some assumptions about the increment of runoff that will be generated in the future from buildout of the watershed. We need to have a clear and objective methodology for doing this. Otherwise, we are likely to continue to have standoffs between applicant engineers, city staff, and neighbors about the correct assumptions to make.

16. ORS 227.186(2) requires these regulations to be adopted by ordinance, not by administrative order. The existing Manual is an acknowledged land use regulation, just like the zoning code. ORS 227.186(2) requires: "All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance." Administrative rulemaking is a "legislative act" and it is "relating to \* \* \* zoning." Aside from complying with the statute, there are other advantages to adopting this package as an ordinance. First, it will get a much fuller airing in the city council public hearing process. If the city is now going to adopt an overlay zone for all property in the city that regulates development allowed based on stormwater, that policy should get the fullest public airing possible. Second, the bulk of these Manual amendments are driven by the city council's stormwater mandate in EC 9.6790(6), adopted in 2008 at the request of citizen groups. See quoted EC language above. In the course of reviewing these draft amendments, the City Council might have second thoughts about the wisdom of some of the 2008 language. The Council can have second thoughts and act on them. The City Manager and staff, on the other hand, are stuck with implementing the 2008 language, for better or worse.

Sincerely,



Bill Kloos

Enclosed:

Exhibit A: Stormwater Code, EC 9.6790-9.6797

- Exhibit B: Administrative Order No. 58-03-06 (April 14, 2003)
- Exhibit C: Nottingham Decision, ST 06-20, SR 06-12, SDR 06-3, at page 8 (Oct. 10, 2007)
- Exhibit D: Stormwater Basin Master Plan: Volume I: Study Methodology and Summary (August 2002) (302 pages; printed from city website at: [http://www.eugene-or.gov/portal/server.pt?open=514&objID=4250&parentname=CommunityPage&parentid=15&mode=2&in\\_hi\\_userid=2&cached=true](http://www.eugene-or.gov/portal/server.pt?open=514&objID=4250&parentname=CommunityPage&parentid=15&mode=2&in_hi_userid=2&cached=true))
- Exhibit E: Example: Stormwater Basin Master Plan: Volume I: Amazon Creek (December 2002)( 208 pages; printed from city website at: [http://www.eugene-or.gov/portal/server.pt?open=514&objID=4250&parentname=CommunityPage&parentid=15&mode=2&in\\_hi\\_userid=2&cached=true](http://www.eugene-or.gov/portal/server.pt?open=514&objID=4250&parentname=CommunityPage&parentid=15&mode=2&in_hi_userid=2&cached=true))
- Cc: Client

## EC 9.6790-9.6797 (2010) – Eugene Code Stormwater Provisions

**9.6790**     **Stormwater Management Manual.** In order to implement Section 9.6791 through 9.6797 of this code, the City Manager shall adopt in accordance with EC 2.019, City Manager – Administrative and Rulemaking Authority and Procedures, a Stormwater Management Manual. The Stormwater Management Manual may contain forms, maps and facility agreements and shall include requirements that are consistent with the following goals:

- (1) Reduce runoff pollution from development by reducing impervious surfaces and capturing and treating approximately 80% of the average annual rainfall.
- (2) Control and minimize flows from development in the Headwater Areas using a variety of techniques to release water to downstream conveyance systems at a slower rate and lower volume, thereby reducing the potential for further aggravation of instream erosion problems.
- (3) Emphasize stormwater management facilities that incorporate vegetation as a key element, and include design and construction requirements that ensure landscape plant survival and overall stormwater facility functional success.
- (4) Operate and maintain stormwater management facilities in accordance with facility-specific O & M Plans.
- (5) Reduce pollutants of concern that are generated by identified site uses and site characteristics that are not addressed solely through the pollution reduction measures by implementing additional specific source control methods including reducing or eliminating pathways that may introduce pollutants into stormwater, capturing acute releases, directing wastewater discharges and areas with the potential for relatively consistent wastewater discharges to the wastewater system, containing spills on site, and avoiding preventable discharges to wastewater facilities, surface waters or ground waters.
- (6) Except as otherwise allowed by this land use code, allow disturbances or development within drainage ways only when all of the following conditions exist:
  - (a) The disturbance or development will not impede or reduce flows within the drainage way;
  - (b) The disturbance or development will not increase erosion downstream; and
  - (c) The constructed pipe system is sized to convey all of the runoff from the upstream watershed when the upstream watershed is completely developed.

*(Section 9.6790 added by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006; amended by Ordinance No. 20417, enacted August 11, 2008, effective July 7, 2009.)*

**9.6791**     **Stormwater Destination.**

- (1) **Purpose.** The purpose of EC 9.6791 is to protect life and property from flood and drainage hazards by maintaining the capacity of the city's stormwater conveyance system through the establishment of destination regulations for stormwater runoff from development.
- (2) **Applicability.** Destination standards apply to all development.
- (3) **Standards.** Stormwater drainage facilities shall be designed and constructed according to adopted plans and policies, and in accordance with standards in EC Chapters 6 and 7, and the stormwater destination provisions and the facility design requirements set forth in the Stormwater Management Manual. On-site infiltration is the preferred stormwater destination for development in

the River Road-Santa Clara Basin. An applicant proposing a new development must submit documentation to the city showing the stormwater destination into which the proposed development will be disposed. The documentation must establish that the new development will be disposed of into existing stormwater drainage facilities that, considering all developments that have received tentative or final plan approval as of the date the developer submits a complete application, have the capacity to handle the stormwater runoff that will be generated by the proposed new development for the flood control design storm, or, if the applicant cannot establish that existing stormwater drainage facilities have such capacity, the applicant must construct storm drainage facilities to accommodate the stormwater draining from the proposed development.

- (4) **Underground Injection Control Systems.** Stormwater runoff disposed of in underground systems is also regulated through the federal Underground Injection Control (UIC) program under Part C of the Safe Drinking Water Act (42 U.S.C. § 300, Chapter 6A, Subchapter XII) and Oregon Administrative Rule Chapter 340, Section 044.

*(Section 9.6791 added by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006; amended by Ordinance No. 20417, enacted August 11, 2008, effective July 7, 2009.)*

**9.6792 Stormwater Pollution Reduction.**

- (1) **Purpose.** The purpose of EC 9.6792 is to reduce the impacts that urbanization is having on the city's water quality by providing standards for the capture and treatment of stormwater runoff from development.
- (2) **Applicability and Exemptions.**
- (a) Except as exempt under EC 9.6792(2)(c), the standards in EC 9.6792(3) apply to all land use applications submitted after July 14, 2006 requesting approval of one or more of the following:
1. A cluster subdivision - tentative plan (EC 9.8055);
  2. A conditional use (EC 9.8090 or 9.8100);
  3. A partition - tentative plan (EC 9.8215 or 9.8220);
  4. A planned unit development - tentative plan (EC 9.8320 or 9.8325);
  5. Site review (EC 9.8440 or 9.8445);
  6. A subdivision tentative plan (EC 9.8515 or 9.8520).
- (b) Except as exempt under EC 9.6792(2)(c), the standards in EC 9.6792(3) apply to all applications for development permits submitted after July 14, 2006.
- (c) The standards in EC 9.6792(3) do not apply to:
1. A land use application that will result in the construction or creation of less than 1,000 square feet of new or replaced impervious surface at full buildout of the development.
  2. A development permit application for any of the following:
    - a. Development of a lot or parcel included in a land use application that was determined by the city to comply with the standards in EC 9.6792(3). For such a development permit, the approved land use plan shall control.
    - b. Development of a lot or parcel that was not included in a land use application that was determined by the city to comply with the standards in EC 9.6792(3) and:
      - (1) Will result in less than 1,000 square feet of new or

replaced impervious surface within a 12 month period;  
or

- (2) Is to construct or alter a one or two family dwelling; or
- (3) The replacement of more than 1,000 square feet of impervious surface for purposes of maintenance or repair for the continuance of the current function, providing that as part of such maintenance and repair the applicant is replacing less than 50% of the length of the stormwater drainage system (including pipes, drainageway catch basins and drywells) on the development site.

**(3) Standards.**

(a) Applications shall include pollution reduction facilities selected from the Stormwater Management Manual as follows:

- 1. For land use applications listed in EC 9.6792(2)(a) for undeveloped land, the selected pollution reduction facilities shall treat all the stormwater runoff from the development site that will result from the water quality design storm;
- 2. For land use applications listed in EC 9.6792(2)(a) that change or add development to an already developed site, the selected pollution reduction facilities shall treat the stormwater runoff from all added and replaced impervious surface that will result from the water quality design storm;
- 3. For development permit applications, the selected pollution reduction facilities shall treat all stormwater runoff from all new or replaced impervious surface, or an equivalent on-site area, that will result from the water quality design storm;

(b) All pollution reduction facilities shall be sited, designed and constructed according to the pollution reduction provisions and the facility design requirements set forth in the Stormwater Management Manual. Pollution reduction facilities must be designed using one of the three methodologies outlined in the Stormwater Management Manual.

(c) The standards in EC 9.6792(3) may be adjusted pursuant to EC 9.8030(24).

*(Section 9.6792 added by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)*

**9.6793 Stormwater Flow Control (Headwaters).**

(1) **Purpose.** The purpose of EC 9.6793 is to protect waterways in the headwaters area from the erosive affects of increases in stormwater runoff peak flow rates and volumes resulting from development.

(2) **Applicability and Exemptions.**

(a) Except as exempt under EC 9.6793(2)(c), the standards in EC 9.6793(3) apply to all land use applications for development sites in the headwaters area that drain directly into a headwater stream or drain into a pipe that discharges into a headwater stream that are submitted after July 14, 2006 requesting approval of one or more of the following:

- 1. A cluster subdivision - tentative plan (EC 9.8055);
- 2. A conditional use (EC 9.8090 or 9.8100);
- 3. A partition - tentative plan (EC 9.8215 or 9.8220);
- 4. A planned unit development - tentative plan (EC 9.8320 or 9.8325);

5. Site review (EC 9.8440 or 9.8445);
  6. A subdivision tentative plan (EC 9.8515 or 9.8520).
- (b) Except as exempt under EC 9.6793(2)(c), the standards in EC 9.6793(3) apply to all applications for development permits for development sites in a headwaters area that drain directly into a headwater stream or drain into a pipe that discharges into a headwater stream that are submitted after July 14, 2006.
- (c) The standards in EC 9.6793(3) do not apply to:
1. A land use application that will result in the construction or creation of less than 1,000 square feet of new or replaced impervious surface at full buildout of the development.
  2. A development permit application for any of the following:
    - a. Development of a lot or parcel included in a land use application that was determined by the city to comply with the standards in EC 9.6793(3). For such a development permit, the approved land use plan shall control.
    - b. Development of a lot or parcel that was not included in a land use application that was determined by the city to comply with the standards in EC 9.6793(3) and:
      - (1) Will result in less than 1,000 square feet of new or replaced impervious surface within a 12 month period; or
      - (2) Is to construct or alter a one or two family dwelling; or
      - (3) Is for the replacement of more than 1,000 square feet of impervious surface for purposes of maintenance or repair for the continuance of the current function, providing that as part of such maintenance and repair the applicant is replacing less than 50% of the length of the stormwater drainage system (including pipes, drainageway catch basins and drywells) on the development site.
  3. Development sites within a drainage basin for which the city has constructed or approved a project to restore the receiving waterway, and the entire downstream system has been designed to accommodate full build-out conditions within the drainage basin.
- (3) **Standards.**
- (a) Applications shall demonstrate, using methodology in the Stormwater Management Manual, that peak rates of flow delivered to an existing open waterway at a point above 500 feet in elevation will not increase during storms larger than the water quality design storm and smaller than the flood control design storm as a result of the development that is the subject of the application;
  - (b) For purposes of designing the system as required by the standards in this section, the amount of impervious surface per lot is assumed to be the maximum lot coverage allowed for the use in the zone in which it is located, unless the applicant demonstrates otherwise.
  - (c) All facilities to control the rate of stormwater runoff shall be sited, designed and constructed according to the flow control provisions and the facility design requirements set forth in the Stormwater Management

Manual. Flow control facilities must be designed using one of the methodologies outlined in the Stormwater Management Manual.

- (d) The standards in EC 9.6793(3) may be adjusted pursuant to EC 9.8030(24).

*(Section 9.6793 added by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)*

**9.6794 Stormwater Oil Control.**

- (1) **Purpose.** The purpose of EC 9.6794 is to protect the city's stormwater system from oil and grease from stormwater runoff of impervious surface areas on properties that produce high concentrations of these pollutants.
- (2) **Applicability.** Oil control standards set forth in EC 9.6794(3) apply to:
  - (a) All new commercial and industrial development with parking lots that store wrecked or impounded vehicles; or
  - (b) Any development that would result in an expected daily traffic count greater than one hundred vehicles per 1,000 square feet of gross building area, based on the most recent version of The Institute of Transportation Engineers' Trip Generation Manual; or
  - (c) Any development that would result in 100 or more off-street parking spaces; or
  - (d) Any commercial or industrial development that receives an adjustment approving the installation of 125 percent or more of the minimum off-street parking spaces required by EC 9.6410(3), Minimum Number of Required Off-Street Parking Spaces and that adjustment will result in, at least, a total of 10 parking spaces.
- (3) **Standards.** Unless adjusted pursuant to EC 9.8030(24), all oil control facilities shall be sited, designed and constructed according to the oil control provisions and the facility design requirements set forth in the Stormwater Management Manual.

*(Section 9.6794 added by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)*

**9.6795 Stormwater Source Controls.**

- (1) **Purpose.** The purpose of EC 9.6795 is to prevent stormwater pollution by eliminating pathways that may introduce pollutants into stormwater.
- (2) **Applicability and Exemptions.** Except as exempted below and except when the source control would duplicate source controls required by a state or federal permit obtained by the applicant, source control standards set forth in EC 9.6795(3), apply to all land use applications, development permits and tenant improvements that result in any of the defined site uses or characteristics listed in EC 9.6795(2)(a)–(h).
  - (a) Fuel dispensing facilities and surrounding traffic areas where vehicles, equipment, or tanks are refueled on the premises. A fuel dispensing facility is the area where fuel is transferred from bulk storage tanks to vehicles, equipment, and/or mobile containers. Exempt from this subsection are:
    - 1. Propane tanks.
    - 2. Fuel dispensing areas generally used to service oversized equipment, for example cranes, that cannot maneuver under a roof or canopy.
    - 3. Existing fueling areas where scope of work is limited to a new canopy installation over an existing fuel pad that is not being upgraded, an underground tank replacement for compliance with

- state regulations, or the replacement of a fuel pump on an existing fuel pad that is not being upgraded.
- (b) Exterior storage of liquid materials, for example chemicals, food products, waste oils, solvents, process wastewaters, or petroleum products in aboveground containers, in quantities of 50 gallons or more, including permanent and temporary storage areas. Exempt from this subsection are underground storage tanks or installations requiring a Water Pollution Control Facility (WPCF) permit and containers with internal protections (such as double-walled containers).
  - (c) All facilities that store solid waste. A solid waste storage area is a place where solid waste containers, including compactors, dumpsters, and garbage cans, are collectively stored. Solid waste storage areas include, areas used to collect and store refuse or recyclable materials collection areas. Exempt from this subsection are solid waste storage areas for one and two family dwelling and areas used for the temporary storage of wood pallets or cardboard.
  - (d) Developments that stockpile or store high-risk or low-risk bulk materials in outdoor containers, as the terms "high risk" and "low risk" are in the Stormwater Management Manual. Exempt from this subsection are:
    - 1. Materials which have no measurable solubility or mobility in water and no hazardous, toxic or flammable properties.
    - 2. Materials which exist in a gaseous form at ambient temperature.
    - 3. Materials, except for pesticides and fertilizers, that are contained in a manner that prevents contact with stormwater.
  - (e) Developments proposing the installation of new material transfer areas as defined in the Stormwater Management Manual, or structural alterations to existing material transfer areas, such as access ramp re-grading and leveler installations. Exempt from this subsection are areas used only for mid-sized to small-sized passenger vehicles and restricted by lease agreements or other regulatory requirements to storing, transporting or using materials that are classified as domestic use, for example, primary educational facilities (elementary, middle or high schools), buildings used for temporary storage and churches.
  - (f) All development with a designated equipment or vehicle washing or steam cleaning area, including smaller activity areas such as wheel-washing stations. Exempt from this subsection are:
    - 1. Washing activity areas generally used to service oversized equipment that cannot maneuver under a roof or canopy, for example cranes and sail boats.
    - 2. Evaporation unit installed as part of a wash recycling system are exempt from the wastewater connection requirement.
    - 3. One and two family dwelling sites.Development that is intended for the storage of 10 or more fleet vehicles shall include a designated vehicle washing area.
  - (g) All development projects that disturb property suspected or known to contain contaminants in the soil or groundwater.
  - (h) All development with new covered vehicle parking areas, or existing parking structures that are being developed. Exempt from this subsection are single-level canopies, overhangs and carports.
- (3) **Standards.** Unless adjusted pursuant to EC 9.8030(24), all source controls shall be designed and constructed according to the source control provisions

set forth in the Stormwater Management Manual.

- (4) **Enforcement.** Failure to construct, operate and maintain source controls when a land use application, development permit or tenant improvement has resulted in a defined site use or characteristic listed in EC 9.6795(1)(a)-(h) is subject to enforcement in accordance with EC Chapter 6.

*(Section 9.6795 added by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)*

#### **9.6796     Dedication of Stormwater Easements.**

- (1) **Purpose.** The purpose of EC 9.6796 is to ensure that city maintained stormwater management facilities designed and constructed in accordance with EC 9.6791-9.6795 and the Stormwater Management Manual can be accessed by the city for routine and/or emergency maintenance to protect life and property from flood and drainage hazards, ensure that water quality is protected, and to ensure that waterways in the headwaters area are protected from the erosive effects of runoff.
- (2) **Applicability.** Stormwater easement standards set forth in EC 9.6796(3) apply to all land use applications and development permits that result in the construction of a city maintained stormwater management facility.
- (3) **Standards.** The applicant must dedicate public easements approved by the city over city maintained stormwater management facilities provided the city makes findings to demonstrate consistency with constitutional requirements. The conveyance of ownership or dedication of easements may be required in any of the following circumstances:
  - (a) Except for areas on the city's acknowledged Goal 5 inventory, where the subject property in the proposed development is or will be periodically subject to accumulations of surface water or is traversed by any open drainage way, headwater, stream, creek, wetland, spring, or pond, including those not maintained by the city which drain onto or from city-owned property or into city maintained facilities.
  - (b) For areas on the city's acknowledged Goal 5 inventory, where the subject property in the proposed development is or will be periodically subject to accumulations of surface water or is traversed by any water course or channel.
  - (c) Where necessary to extend public drainage facilities and services to adjoining undeveloped property.
  - (d) To provide necessary drainage from the public right-of-way.
  - (e) Where the City has accepted functional maintenance responsibility for pollution reduction and/or flow control facilities in accordance with EC 9.6797(4)(b).

*(Section 9.6796 added by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006; administratively corrected January 1, 2008.)*

#### **9.6797     Stormwater Operation and Maintenance.**

- (1) **Purpose.** The purpose of EC 9.6797 is to ensure that stormwater management facilities designed and constructed in accordance with EC 9.6791-9.6796 and the Stormwater Management Manual are operated and maintained in a manner that protects life and property from flood and drainage hazards, protects water quality, and protects the waterways in the headwaters area from the erosive effects of runoff.
- (2) **Applicability.** Operation and maintenance standards apply to all facilities

designed and constructed in accordance with EC 9.6792 through EC 9.6795 and the Stormwater Management Manual.

(3) **Standards.**

- (a) Unless the city accepts the responsibility to operate and maintain a stormwater facility, all stormwater management facilities shall be privately operated and maintained.
- (b) All stormwater facilities shall be operated and maintained in accordance with EC Chapters 6 and 7, and the Stormwater Management Manual.
- (c) Privately maintained facilities. Applications proposing private operation and maintenance of all or part of the stormwater facility shall include an Operations and Maintenance Plan in accordance with the forms adopted as a part of the Stormwater Management Manual.
- (d) Publicly maintained facilities. Applications proposing city operation and maintenance of all or part of the stormwater facility shall include an Operations and Maintenance Agreement in accordance with the facility agreements adopted as a part of the Stormwater Management Manual.

(4) **City Maintenance.**

- (a) If the conditions of EC 9.6797(4)(b) are satisfied, the city will accept functional maintenance responsibility of the following facilities:
  - 1. A facility designed and constructed to provide treatment solely for runoff from the public right-of-way;
  - 2. A facility designed and constructed to provide treatment solely for runoff from 4 or more one and two family residential properties that are not under common ownership;
  - 3. A facility designed and constructed to provide treatment solely for runoff that is a combination of one and two family residential properties not under common ownership and the public right-of-way.
- (b) The city will accept functional maintenance responsibility of a facility listed in EC 9.6797(4)(a) if all of the following conditions are met:
  - 1. The city has approved the dedication of the easement or public way to the city the property on which the facility is located or the city has approved plans allowing the facility to be placed within the public right-of-way; and
  - 2. The city has approved plans dedicating the drainage system conveying runoff from the residential properties to the stormwater facility as a public drainage system; and
  - 3. The stormwater facility access routes have been located within a dedicated public easement on private or commonly held property, within the public right-of-way or on city owned property; and
  - 4. Sufficient easement area, right-of-way width or property have been provided to accommodate the construction and maintenance of all existing and proposed utilities and public infrastructure; and
  - 5. The facility is designed and constructed in accordance with the city's Stormwater Management Manual; and
  - 6. Access to the proposed facility allows maintenance to be performed using city owned maintenance equipment; and
  - 7. As-construct plans of the drainage system shall be submitted designating all facilities that are proposed for public maintenance within 30 days of the city accepting maintenance responsibilities; and

8. The facility is designed and constructed in compliance with the city's Public Improvement Design Standards Manual.

- (c) Notwithstanding EC 9.6797(4)(a) and (b), the city will not accept operation and maintenance responsibility of eco-roofs, roof gardens, pervious pavement, contained planters, tree credits, rainwater harvesting or private drywells.

- (5) Private Operation and Maintenance.** All privately operated and maintained stormwater management facilities shall be operated and maintained in accordance with EC Chapter 6.

*(Section 9.6797 added by Ordinance No. 20369, enacted June 14, 2006, effective July 14, 2006.)*

ADMINISTRATIVE ORDER NO. 58-03-06  
of the  
Executive Manager  
Public Works Department  
City of Eugene, Oregon

APPROVING THE EUGENE STORMWATER BASIN  
MASTER PLANS.

The Executive Manager of the Public Works Department of the City of Eugene finds that:

A. Under the provisions of Chapter IV, Section 16 of the Eugene Charter of 2002, the City Manager is designated as the administrative head of the City, and is specifically authorized to appoint and remove all employees (except as otherwise provided in the Charter), and to enforce all ordinances of the City.

B. Pursuant to that authority, the former City Manager, James R. Johnson, and the current City Manager pro tem, James R. Carlson have designated and/or affirmed my appointment as Executive Manager of the City's Public Works Department. In such capacity I have the responsibility for supervision of that department and its employees.

C. The Eugene Stormwater Basin Master Plans (Basin Plans) have been developed to replace the 1990 Otak Areawide Drainage Master Plans. The Basin Plans document the comprehensive basin planning process and results, and provide guidance for the management of stormwater throughout the study area. These plans describe a "multiple-objective" approach (*i.e.*, incorporating water quality, stormwater-related natural resources and flood control) to stormwater management, and are to be used by City staff for background/contextual information, for development of the City's biennial CIP, for contextual support for proposed development standards, and for evaluating technical information about the stormwater system. However, the Basin Plans will not be used in a manner that regulates conduct or activities of the public.

D. The new Basin Plans:

- Identify the major drainage basins and major subbasin delineations;
- Describe the study area characteristics (existing/build-out land use, impervious surface cover, slopes, topography, soil types, drainage features, etc.);
- Describe the flood control, water quality and stormwater-related natural resource problems and opportunities in each major basin;

Administrative Order - 1

- Describe the long-term (35 year multiple objective capital improvement program (including water quality, flood control and sw-related natural resources projects as well as stream corridor acquisitions) and proposed new development standards that would, together and along with the other multitude of activities in the stormwater program, address the identified problems and opportunities; and
- Describe the City's drainage criteria for design of stormwater system improvements.

E. The drainage criteria for design of stormwater system improvements contained in the Basin Plans, and other specific information about design storm events and analysis and design methods serve as guidance to the City and the public and are neither requirements nor prohibited conduct.

**NOW, THEREFORE,**

The Executive Manager of the Public Works Department of the City of Eugene orders and directs that:

1. The Eugene Stormwater Basin Master Plans (Basin Plans) are hereby approved, and shall be utilized by staff of the Public Works Department in lieu of the 1990 Otak Areawide Drainage Master Plans in evaluating development proposals. The Basin Plans shall not be used as approval criteria.
2. Copies of this Order shall be forwarded to all Public Works Department Division Managers.

Dated this 14 day of April, 2003.

  
\_\_\_\_\_  
Kurt A. Corey  
Executive Manager  
Public Works Department

*me*

**BEFORE THE HEARINGS OFFICIAL FOR  
THE CITY OF EUGENE, OREGON**

In the Matter of an Appeal of a Planning	)	File Nos. ST 06-20
Director's decision denying a tentative	)	SR 06-12 & SDR 06-3
subdivision plan, site review and standards	)	Nottingham Court
review for property known as tax lots 100	)	Picullel Group, Applicant
and 500, Assessor's Map 17-04-01-22	)	

**A. Introduction**

1. This decision involves an appeal of a planning director decision that denies a tentative site plan, site review and standards review for a 5.89 acre parcel located east of Nottingham Avenue, and west of the Santa Clara Waterway. The property includes a significant riparian corridor, identified as Site E57D in the city's Goal 5 Water Resources Conservation Plan (Goal 5 Plan), a significant wetland, identified as RSC-40 on the Goal 5 Plan, and a flood hazard area. According to the applicant, approximately .52 acre of the site is encumbered by the resources and their associated setbacks.

2. At issue in this appeal is whether the city properly interpreted the Goal 5 Plan maps with respect to the location of the riparian corridor, properly identified the location of the conservation setback from the riparian corridor, and whether the city erred by requiring the applicant to comply with draft stormwater standards that require a stormwater analysis that includes a 25-year flood event.

**B. Regulatory Context**

**1. Riparian Corridor**

Statewide Planning Goal 5 requires that the city inventory significant natural resources, including riparian corridors, natural areas, wildlife habitats and wetlands. Under Goal 5, the city must: (1) inventory the quantity, quality and location of each resource; (2) adopt standards to determine which of the identified resources are significant; (3) evaluate the environmental, social, economic and energy (ESEE) impacts of conflicting uses on those resources; and (4) adopt a program that protects the resource from all conflicting uses, allows limited conflicting uses, or favors the conflicting uses over protection of the resource. For certain Goal 5 resources, OAR Chapter 660, division 23 sets out safe harbor provisions for local governments to ensure that the resources are deemed to be adequately protected.

From 1987 to 2005, Eugene inventoried its Goal 5 resources and adopted a variety of interim regulations to protect them. In 2005, the city council adopted Ordinance 20351, which implements the city's Goal 5 program to protect riparian corridors, wildlife habitats associated with riparian corridors, and wetlands. The ordinance includes several exhibits, of which only three are pertinent.

Exhibit A is the Goal 5 Plan, which is divided into four sections. Section I includes a one-page introduction. Section II sets out the criteria and methodology used to identify and evaluate the quality of a particular resource. Sites that score over a certain threshold number resulting from the methodology are deemed to be significant. Section III identifies the significant riparian corridor, wildlife habitat, and wetland

resources sites within the Eugene UGB. It includes two tables, one describing significant riparian corridor sites and one describing significant wetlands. The tables are followed by maps at a 1 inch: one-half mile scale. Section IV is titled "Degree of protection intended for significant riparian corridor, wildlife habitat, and wetland resource sites within the Eugene urban growth boundary." It includes tables summarizing the ESEE findings set out in Exhibit B, the proposed conservation setback distance for each site and 16 maps that depict the general location of those sites in relation to the Eugene area. The scale of the maps vary. Map 16, the map that depicts the subject property, is at a 1 inch:2 mile scale.

Exhibit B includes the city's ESEE analysis for the sites, which are grouped into 24 geographic areas. The ESEE analysis includes the city's evaluation of the sites, and its conclusions regarding the appropriate level of protection for the sites included in each group. Exhibit D applies the /WR overlay to properties within city limits that either include a Goal 5 resource or are located within a designated Goal 5 resource impact area. The /WR overlay is applied to the entirety of a tax lot that includes an identified Goal 5 resource, even though the development limitations that go along with the /WR only apply to the Goal 5 resource site and to the conservation area associated with it. EC 9.4920. The /WR overlay was applied to Tax lot 500 and a portion of Tax Lot 100. The remainder of Tax Lot 100 was rezoned in early 2007, after it was annexed to the city. The /WR overlay was applied to the remainder of Tax lot 100 at that time.

Ordinance 20351 also includes amendments to the city's zoning code to implement the Goal 5 Plan. For the most part the /WR development standards are set out in Eugene Code (EC) 9.4900 through 9.4980.

EC 9.4920(1) provides in relevant part that the "component areas of the /WR conservation area for Goal 5 Water Resources Sites are described and defined as follows: \* \* \*

- "(b) For riparian corridor sites not listed in [EC 9.4920(1)(a)], the /WR conservation area consists of the area within the Goal 5 Water Resource Site and the area within the applicable conservation setback."
- "(c) The conservation setback for a particular riparian corridor or upland wildlife habitat is determined based on whether it is a Category A, B, C, D or E stream in the [Goal 5 Plan.] Conservation setbacks are measured horizontally from the top of the high bank \* \* \*.

"(1) For conservation setback distances measured from the top of the high bank, the top of high bank is the highest point at which the bank meets the grade of the surrounding topography, characterized by an abrupt or noticeable change from a steeper grade to a less steep grade, and, where natural conditions prevail, by a noticeable change from topography or vegetation primarily shaped by the presence and/or movement of water to topography not primarily shaped by the presence of water. Where there is more than one such break in the grade, the uppermost shall be considered the top of high bank."

Development within /WR conservation areas is limited, and no more than 33 percent of any newly created lot may be included in a /WR conservation area. EC 9.8515(1)(a).

## **2. Stormwater Design Standards**

EC 9.8615 provides:

"An applicant proposing a new development must submit documentation to the City showing the stormwater drainage facilities into which the proposed development will drain. The documentation must establish that the new development will drain into existing stormwater drainage facilities that \* \* \* have the capacity to handle the stormwater drainage that will be generated by the proposed development \* \* \*. \* \* \* Stormwater drainage facilities shall be designed and constructed according to adopted plans and policies, and in accordance with standards in [EC Chapters 6 and 7.]"

EC 9.8.515(10)(a) requires that flood hazard development standards be met when development occurs within a floodplain. EC 9.8515(5) requires a showing that the development will not result in "unreasonable risk of fire, flood, \* \* \* or other public health or safety concerns."

The applicant proposes to direct stormwater to the East Santa Clara Waterway. It provided evidence that the East Santa Clara Waterway has the capacity to handle the anticipated stormwater from the development according to stormwater standards adopted by the city in 1990 (the OTAK study.) Opponents argued that the Otak Study did not reflect the stormwater flows that occur during a major storm event, noting that the standards pre-dated the 1996 floods. Opponents also noted that the city had updated its stormwater standard for all but the Santa Clara area, but that a draft report (the URS report) had been submitted to the city, and included appropriate stormwater standards to address larger storm events. The city agreed with opponents that the newer stormwater standards provided more appropriate stormwater design standards. The city then concluded that the applicant had failed to demonstrate that it could satisfy those standards and, as a result, failed to demonstrate that the proposed development satisfied EC 9.8515(10)(a) and 9.8515(5).

## **C. The Appeal**

The 5.89-acre development site includes a portion of Goal 5 Resource Site E57D. E57D is a part of the East Santa Clara riparian corridor. E57D encompasses approximately seven acres, and the area around the site is developed with primarily low density residential uses along the western boundary, and agricultural uses along its eastern boundary. The Goal 5 Plan identifies this segment of the East Santa Clara Waterway as a Category C stream. The conservation area for Category C Streams is comprised of the resource site and a conservation setback located 40 feet from the "top of bank." EC 9.4920(2)(c)(1).

The site is located at the terminus of Nottingham Avenue, and is developed with a single family dwelling and outbuildings. The East Santa Clara Waterway forms its eastern boundary and the streambed is generally at the 361-foot elevation. From the streambed, the western stream bank rise steeply to the 368-foot elevation, then

undulates up to a 374-foot elevation. The evidence shows that the 374-foot elevation is consistent with the natural elevation of abutting properties. The area between the streambed and the bank at the 368-foot elevation is covered with blackberry vines, and trees. There is little evidence of riparian vegetation beyond the shoreline.

The Picullel Group (the "applicant") would like to develop the site with a 34-lot infill subdivision. The applicant surveyed the site to establish the property boundaries and specifically locate the resource sites. The tentative subdivision plan shown to staff at a pre-application conference identified the "top of high bank" as the two-year high water mark for the waterway. Using the 2-year waterway line as the "top of bank" for the purposes of EC 9.4920, the applicant then identified the 40-foot conservation setback area. The applicant asserted, and the city initially concurred, that the Goal 5 resource site included and identified the waterway high water line as the "top of bank."

Neighbors reviewed the tentative plan, including the Goal 5 riparian corridor site and the associated conservation setback, and objected. According to the neighbors, the "top of bank" defined in EC 9.4920(1)(c)(1), includes the area between the 368-foot elevation line and the 374-foot elevation line. The neighbors noted that the "top of bank" definition requires an evaluation of the site elevation in relation to other properties in the area, and includes areas that are subject to inundation and shaped by water. The neighbors provided evidence that the site had been partially inundated during the 1996 floods, and that the area to the 374-foot contour had been shaped by floodwaters.

In response to this new testimony, the city re-evaluated the proposal. The planning director concluded that the "top of bank" defined by EC 9.4920(1)(c)(1) is located at the 374-foot contour. The city also concluded that the 374-foot contour defined the western limits of the Goal 5 site, and that the 40-foot conservation setback further shifted the conservation area to the west. The planning director concluded that over one-half of the site is within the WWR conservation area. Consequently, the planning director concluded that the proposal failed to satisfy other development standards that restrict the percentage of new lots covered by the WWR overlay, and failed to show that stormwater drainage standards (which require protection of Goal 5 riparian sites) have been met. A decision issued on June 18, 2007 reflected that reasoning.

The applicant filed two appeals of the planning director's decision. The first appeal challenged the Goal 5 Plan and mapping interpretation directly (CI 07-2.) The second appeal challenged the June 18, 2007 planning director decision. The interpretational appeal was consolidated with another appeal that alleged similar errors (CI 07-2). However, after the interpretational appeals were consolidated and a hearing was held, the applicant chose to withdraw the interpretational appeal and proceed with this appeal. The appeal challenges the city's interpretation and application of the Goal 5 Plan maps, the conclusion that the applicable "top of bank" is the 374-foot contour, and that the applicant is obliged to meet the URS stormwater standards.

#### **D. Analysis**

##### **1. The Goal 5 Plan Riparian Corridor Sites**

The hearings official agrees with the applicant that EC 9.0500 and 9.4920 are ambiguous and that different interpretations will result in different areas being designated as WWR conservation areas. Ambiguous provisions are interpreted according to the Eugene Hearings Official's decision.

Page 4 of 9

Appeal of Planning Director Decision (ST 06-20, SR 06-12 & SDR 06-3)

to the methodology set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). There, the Oregon Supreme Court held that the reviewing body first looks to the text and context of the ambiguous provision. If the ambiguity is resolved at that point, then no further analysis is required. However, if the text and context do not address the ambiguity, the reviewer then turns to legislative history and, after that, to rules of statutory construction set out in statutes and case law.

In this case, the ambiguity can be boiled down to three questions:

1. Do the maps included in the Goal 5 Plan depict the official boundaries of the resource within a specific development site or can the Goal 5 Resource site be identified through an on-site survey?
2. Does the WWR conservation area include the area located between the boundaries of the Goal 5 Resource site and the area encompassed within the conservation setback?
3. How is EC 9.4920(1)(b) applied when there is a discrepancy between the "top of bank" depicted within a Goal 5 resource site, and the "top of bank" as described in EC 9.4920(1)(c)(1)?

**a. Ambiguity Regarding Goal 5 Plan Maps**

The applicant asserts that the maps included in the Goal 5 Plan are similar to the Eugene-Springfield Area Metropolitan Area General Plan (Metro Plan) land use diagram. The diagram depicts the appropriate location of plan land use designations but relies on more specific delineations set out in refinement plans to identify the boundaries of the plan designations for a specific development site. The applicant contends that interpreted this way, the Goal 5 Plan Map identifies the general location of the Goal 5 resource, and the development plan for an individual property can refine the location of resource and conservation area by applying the methodology set out in EC 9.4929. According to the applicant, EC 9.4920 describes how to establish the "top of bank" line from which the conservation setback is derived, and ensures that the conservation area fully covers both the resource and the setback area.

The applicant asserts that this interpretation is consistent with the findings set out in Ordinance 20296, the predecessor ordinance to Ordinance 20351. Ordinance 20296 states that the maps included in that ordinance (and generally replicated in Ordinance 20351), comply with OAR 660-023-0030(3) mapping standards, in that they are specific enough to inform the reader that a parcel includes a Goal 5 resource, but is not scaled to identify the boundaries of the Goal 5 resource site for the purposes of obtaining a building permit.

The city responds that the information depicted on the large scale Goal 5 Plan maps can be applied to smaller areas and will remain relatively accurate. Neil Bjorkland, city planner, testified that the maps included in the Goal 5 Plan are merely "snapshots" of GIS data, which is coded in shape files and tabular information. The information in the GIS files includes orthophoto aerial maps, planning maps, survey data, and property information. He explained that the GIS data has been analyzed and displayed to correct distortions among the different forms of information. He testified that for the purposes of identifying the location of a Goal 5 site and its related conservation area, the planning

director correctly relied on the GIS map provided to the applicant to depict the location of both the conservation area and the Goal 5 site.

Mr. Bjorkland also testified that the AWR conservation area includes: (1) the Goal 5 Resource site; (2) riparian vegetation associated with the water resource, even if it is not within the boundaries of the site; and (3) the area between the resource site and the outside boundary of the setback. According to Mr. Bjorkland, the resulting conservation area may be considerably larger than the area depicted on the Goal 5 Resource Map, and may result in a much smaller developable site. Mr. Bjorkland conceded, however, that the maps are accurate so long as the map is not at a smaller scale than the original data. With respect to Goal 5 data, the GIS scale used is 1 inch:500 feet. Thus, maps at a greater than 1 inch:500 foot scale accurately depict spacial relationships among features displayed on that map, but maps that enlarge to a 1 inch:40 foot scale (the scale used to create the applicant's tentative plan) will not necessarily accurately depict topography or natural features located within the boundaries of a development site. The applicant provided background information showing that the tax lot GIS "layer" is not generally compatible with the other information layers.

Section 2 of Ordinance 20351 identifies the Goal 5 Plan as a "refinement of the [Metro Plan] \* \* \*." Ordinance 20351, 2. The maps included in the plan depict the Goal 5 Resource sites identified in the plan, and apply the AWR overlay to properties within the city that include those resource sites. This is unlike the Metro Plan land use diagram, which does not include tax lot boundaries, or otherwise identify specific properties. As a result, the hearings official concludes that the maps included in the plan delineate the "Goal 5 Resource Site" for the purposes of EC 9.4920. This interpretation is consistent with EC 9.0500, which refers back to "the resource site as identified on the Goal 5 [Plan.]" Consequently, the planning director did not err in concluding that the Goal 5 Resource site cannot be identified on a site-by-site basis by applying the methodology for establishing the top of bank set out in EC 9.4920(1)(c).

Further, the hearings officer finds that it is not clear from the text of Ordinance 20351 that GIS data that is depicted on smaller scale maps can be used to identify the boundaries of a Goal 5 site, especially when the map is at a smaller than 1 inch:500 foot scale. The hearings official realizes that the application of the Goal 5 Plan maps to small development sites will be particularly troublesome. However, the plan language of the Goal 5 Plan and EC 9.0500 make it clear that the location of the Goal 5 resource site is not to be determined by an on-site analysis. If particular site conditions make it clear that the Goal 5 mapping for the site is incomplete or in error, the Goal 5 site map amendment process set out in EC 9.4960 can be used to clarify the location of the Goal 5 resource site.

Finally, it is inappropriate to rely on findings pertaining to Ordinance 20296 to explain why maps included in Ordinance 20351 are merely representational. First, Ordinance 20351 expressly repealed Ordinance 20296. Second, neither the city nor the applicant point to findings in Ordinance 20351 that support a conclusion that the maps included in the Goal 5 Plan are anything other than what they are described to be: maps depicting the boundaries of the Goal 5 resource.

**b. Ambiguity Regarding the Relationship between the Conservation Area Setback and the Goal 5 Resource Site**

The applicant and the city agree on the purpose of the conservation setback: it is intended to provide a buffer area between the resource site and development. The parties also appear to agree that /WR Conservation area *should* include the Goal 5 Resource site, plus the area that is located between the site and the outside edge of the conservation easement. The dispute lies in whether the plain language of EC 9.4920 results in gap between the /WR conservation setback area and Goal 5 riparian resource site, where the Goal 5 Plan maps do not include the top of a stream bank.

The city provides two responses to the applicant's argument that the application of the two components of a /WR conservation area might result in a gap between the resource site and the conservation setback area. First, the city argues that the definition of "riparian corridors" necessarily includes the area between the top of the bank and the stream, even if it is not depicted that way on the Goal 5 maps. The city emphasizes that the Goal 5 Plan is intended to implement OAR Chapter 660, division 23, and as such, the definition of "riparian corridor boundary" provides appropriate context for establishing what is included in the /WR conservation area. Second, the city argues that the /WR conservation clearly is intended to encompass both areas and should be interpreted to reach that result.

The *PGE v. Bureau of Labor and Industries* analysis does not permit the hearings official "to insert what is omitted or omit what is inserted." ORS 174.010. The /WR conservation area is comprised of two elements: (1) the Goal 5 Resource site, as that is depicted on maps included in the Goal 5 Plan; and (2) the area between the "top of bank" where that area can be identified through topographic and other site features, and the applicable setback distance. As applied to a particular site, it is entirely possible that there is a gap between the riparian resource depicted on the Goal 5 Plan map and the /WR conservation setback area.

Administrative rules that define Goal 5 terms do not aid the city in this instance. OAR 660-023-0090 defines "riparian corridor boundary" as "an imaginary line that is a certain distance from the top bank \* \* \*." If the city had wanted to define either the Goal 5 site boundary or the /WR conservation area as including the "riparian corridor boundary," as defined in OAR 660-023-0090, it could have done so. The city did not. And, even if the definition provides context for the city's Goal 5 program, it does not control how the program is applied in this instance. The definition is included in the Goal 5 safe harbor provisions; the city concedes that Ordinance 20351 did not adopt the safe harbor provisions.

The conclusion is also consistent with the context of EC 9.4920(1)(a) and (b). EC 9.4920(1)(a) applies to only a few sites and specifically identifies the area "between the top of high bank on both sides of the stream and the area within the applicable conservation setback" as the /WR conservation area for those sites. If the /WR conservation area for sites other than those described in EC 9.4920(1)(a) include the Goal 5 resource site, plus the area between the resource site and top of bank, plus the conservation area, the distinction between EC 9.4920(1)(a) and (b) would not need to be made.

#### c. Identification of "Top of Bank"

As noted above, the applicant argues that the "top of bank" on the site is located at the two-year high water mark, and that the 40-foot setback, when placed against this

Decision of the Eugene Hearings Official

Appeal of Planning Director Decision (ST 06-20, SR 06-12 & SDR 06-3)

Page 7 of 9

"top of bank," is adequate to protect the resource on this site. Opponents and the city argue that the "top of bank" is at the 374-foot elevation, and that flood risks should be included in the evaluation of where the "top of bank" is for purposes of establishing both the conservation setback and the appropriate stormwater drainage measures.

The hearings official concludes that the planning director did not err in establishing the 374-foot contour as the general location of the "top of bank" for the purposes of EC 9.4920. As the city notes, the "top of bank" is the "highest point at which the bank meets the grade of the surrounding topography" It is "characterized by an abrupt or noticeable change from a steeper grade to a less steep grade, and, where natural conditions prevail, by a noticeable change from topography or vegetation primarily shaped by the presence and/or movement of water to topography not primarily shaped by the presence of water."

The evidence shows that the surrounding topography is generally at the 374-foot elevation, and that between the 368 foot contour and the 374-foot contour, the land has been shaped by the presences and/or movement of water. There is no support for the applicant's argument that the definition is limited to landforms that are shaped by daily changes in water levels. Further, the applicant's argument that, taken to its extremes, almost all land is shaped by water, is tempered by the other provisions of EC 9.4920(1)(c)(1), which require a relationship between the grade of the surrounding topography. In addition, while the hearings official would otherwise agree with the applicant that one top of high bank is generally at the 368-foot contour, the definition requires that, where there is a break between two banks, the higher bank is the "top of bank" for purposes of the code. Accordingly, the planning director did not err in concluding that the "top of bank" is located at the 374-foot contour.

### **3. Stormwater standards and compliance with EC 9.8515.**

The applicant argues that that the applicable standards are set out in the Otak study and that the city may not apply new, unadopted standards to its proposed development. The hearings official agrees. Case law on this point is clear. Even if the studies and design standards included in an updated plan better address current development conditions, the city may not use the updated standards until they are adopted into the code and acknowledged. *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 124 P3d 1249 (2005) (city may not rely on updated but un-adopted buildable lands inventory to conclude that adequate land is available for residential use); *D.S. Parklane v. Metro*, 165 Or App 1, 994 P2d 1205 (2000) (Goal 2 consistency standards preclude the use of updated population data in place of older population data incorporated into the acknowledged plan.)

Further, EC 9.815 clearly requires that "stormwater drainage facilities shall be designed and constructed according to *adopted* plans and policies" (Emphasis added.) The URS study has not been adopted for the East Santa Clara Waterway. In fact, the administrative order that endorses the study clearly provides that the conclusions and policies included in the study are *not* to be applied to individual development proposals. See Administrative Order 58-03-06, 1 ("However, the Basin Plans will not be used in a manner that regulates conduct or activities of the public.")

With respect to the arguments that the applicant failed to demonstrate that the proposal will not significantly increase flood levels, the Hearings Official agrees with the Decision of the Eugene Hearings Official

Page 8 of 9

Appeal of Planning Director Decision (ST 06-20, SR 06-12 & SDR 06-3)

applicant that EC 9.8515(5)(a) imposes a different standard than EC 9.8515(10), and that EC 9.8515(10) is satisfied if the applicant demonstrates that development within the flood hazard area will satisfy EC 9.6706 to 9.6709 standards.

However, a demonstration that the flood hazards standards are satisfied does not show that the development will not cause an unreasonable flood risk. The applicant's hydrological study includes assumptions regarding a theoretical "wall" that does not address flooding across the East Santa Clara Waterway, where stormwater drainage and floodwaters will likely flow during storm events. Accordingly, the hearings official finds that the planning director did not err by concluding that the applicant had failed to demonstrate that the proposal does not result in an unreasonable risk of flooding.

#### **E. Conclusions**


The hearings official does not have the authority to interpret code provisions to reach a result that makes sense in all cases. Here, both the requirement to use the large scale maps included in the Goal 5 Plan and methodology applied to identify the /WR conservation setback are unintended consequences of the plain language of the code. The hearings official requests that the city consider amendments to the Goal 5 Plan and EC 9.4820 to clarify the relationship between the Goal 5 resource areas depicted on the Goal 5 Plan maps and the /WR provisions set out in EC 9.4820.

The hearings official also concludes that the planning director did not err in setting the 374-foot contour as the location of the "top of bank" for the purposes of establishing the edge of the conservation setback.

Finally, the hearings officer concludes that the planning director erred in applying the USR stormwater drainage standards to the proposed development, but did not err in concluding that the applicant had failed to demonstrate that the proposal will not result in the unreasonable risk of floods.

EC 9.7630(2), the hearings official may affirm, reverse or modify the decision of the planning director. For the reasons set out above, the planning director's decision is affirmed and part and reversed in part.

Dated this 10th day of October, 2007.

  
\_\_\_\_\_  
Anne Corcoran Briggs  
Hearings Official

**PURSUANT TO EC Table 9.7055 and EC 9.7060, THE HEARINGS OFFICIAL'S DECISION IS THE FINAL DECISION OF THE CITY. APPEALS OF THIS DECISION MAY BE FILED WITH THE LAND USE BOARD OF APPEALS, IN ACCORDANCE WITH ORS 197.825 ET SEQ.**

## GILLESPIE Scott N

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**From:** Gordon Anslow <gordon@adhomes.com>  
**Sent:** Thursday, May 02, 2013 4:33 PM  
**To:** GILLESPIE Scott N  
**Subject:** Stormwater Comments

Scott,  
I see Peggy is out, so am forwarding these comments to you.  
Gordon Anslow

Peggy,  
I'd like to make some comments on changes to stormwater biz. I apologize in advance for not having endless time to immerse myself in all the fine points of what is proposed. Nonetheless, there may be some small merit to a few of my quicko comments.

First, a little story. Once upon a time we hired a Landscape Architect to do work on a triplex built behind a single family home (with basement) on Hilyard between 18<sup>th</sup> & 19<sup>th</sup>. We had grades that allowed doing a vegetated treatment swale, which we ran all the triplex runoff through. The following winter, the basement of the house started to flood. The house could have just as easily been on an adjacent property. The owner was dismayed, but the design-build company rode in on a white horse, tore down the nice old house, and built a new 3 story triplex, covering the vegetated swale, and installed an Aquaswirl. Everyone lived happily ever after.

Moral: One may face liability suit from neighbors with flooding basements when you choose the recharge the aquifer method of stormwater disposal. Have your attorney on speed dial.

9.4780 Requiring vegetated treatment will reduce buildable areas, particularly hurting infill and densification. Would be nice if staff would ask for some input from a Soils Geologist, who does work related to founding buildings in Eugene soils, about what they think about charging the soils in these neighborhoods full of water. And the charming little story above raises a serious issue about liability between properties for affecting other's properties by making changes to the flow of water (on or below surface) on your property. A whole body of law and precedent attached to that.

9.6790 (5) Any thought of applying cost/benefit analysis, or is this just anything we can think of.

9.6791 Are we moving more generally into onsite detention? Again, difficult on flat, small infill sites. Is ability to put land to highest and best use (develop densely, in some cases) limited by offsite system capacities? Will this lead to having to build on site systems if want to do anything? Housing just gets more and more expensive, and out of reach of those of modest means.

9.6792 (1) Please don't use the word "green" unless it is meaningfully defined, and ESPECIALLY in regulatory documents. Every construction supplier in the country has figured out how to sell their wares as green.

Page 5, top (c) apply to "all apps for all development permits". Knowledgeable people are racing to do their last infill projects before new regs finally render them nonviable financially.

Page 6, top (d) Who judges this – the "cannot be located" part? You can usually do anything, but whether it becomes financially impossible is quite another thing. Is there any weighing of relative value of compact development and infill, versus the perfect, ideal stormwater system?

If everyone is infiltrating, what is the effect on existing structures foundations, basement flooding, tree health, road beds (which act as reservoirs for water, and which, in hillside areas – serve as streambeds)?

Note that in relatively level parts of town (most of Eugene) in order to carry water by gravity from around a building, then run through a vegetated treatment area by gravity, you usually end up with water at a grade lower than the available outfall. Thus, you have to have a sump and pump, and every time it rains, you burn up electricity to pump rain water up to where you can dispose of it. What is the impact of the increased electrical demand from all those pumps?

I believe we should have stormwater banking, similar to how we now have wetland banking. Large scale projects are done so as to make a major difference to quality of stormwater before it arrives at Long Tom or Willamette River, and rather than teeny little expensive systems at every address in town, at huge expense, and using precious land area (and maybe damaging surrounding buildings and infrastructure), you pay a sum of money to buy into other larger, much more effective and efficient stormwater treatment projects. City could even allow private sector to handle this – you do a large stormwater improvement project, then can sell credits to other small time developers. Money is set aside to provide for operation in perpetuity.

Include provisions for a review – if enactment results in huge decrease in desirable infill and redevelopment and densification, consider changing the standards. Out 3 years? 5?

Walk to the center of the Autzen footbridge and look down. You see a riverbed characterized by large cobbles, with very little fines, silt, sand or smaller gravel. This is because the Willamette is dammed multiple places, cutting off natural sediments and sands and gravels, and much of its' course upstream to where it enters the valley, is fixed by revetments and flood control structures, all put in way back before things like riverine life systems were studied, or were considered important. The natural, annual floods, which used to result in endless looping and meandering, carving into banks and shifting the river course, carried tremendous loads of silt, sand and gravel down the river. Over a period of 50,000 years, the Britz floods, from draining of glacially impounded Lake Missoula, flooded the Willamette as far as Cottage Grove, laying down deep deposits of silt and sand, and loess ripped from the Washington scablands. (Through all of which the salmon runs survived and thrived, I might add.) The natural shape of a river valley is a V; we have a flat valley because of these Britz floods, and deposit of sediments from the backed up floods.

The Willamette in Eugene is missing the normal "bed load" of a healthy, natural river. If we wanted to restore it to something resembling a natural state, short of removing the dams and all the flood control structures, we would have thousands of dumptrucks full of silt, sand, gravel and cobbles to 6" dumping directly into the river. This would recharge the river with a more normal mix of sand and gravel, making for a vastly greater amount of the normally occurring surface area and volume of muds and other bed structures, for microbes and riverbed dwelling biota to thrive in. Lacking that, we could let a little fine silt and sand enter from the Eugene stormwater system.